

**HUMAN RIGHTS FOR CLIENTS
IN STATE FACILITIES
10A NORTH CAROLINA ADMINISTRATIVE CODE 28A, 28B, 28C, 28D**



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CHAPTER 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

SUBCHAPTER 28A - COMMITTEES AND PROCEDURES

SECTION .0100 – SCOPE AND DEFINITIONS

10A NCAC 28A .0101 SCOPE

(a) The purpose of the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter is to set forth regulations governing human rights for clients in state facilities. The state facilities governed by these rules are the regional psychiatric hospitals, mental retardation centers, alcoholic rehabilitation centers, Wright School, the North Carolina Special Care Center at Wilson, Whitaker School, and any other like state owned and operated institutions, hospitals, centers or schools that may be established under the administration of the Division. In addition to these rules, each state facility shall follow the North Carolina General Statutes regarding client rights which are specified in Article 3 of Chapter 122C.

(b) Each state facility shall conduct an annual internal compliance audit of the implementation of these rules and submit the findings to the State Facility Human Rights Committee and the Division.

(c) The Division shall submit an annual report to the Commission on the implementation of the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-17; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

(b) As used in the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means; or unreasonable confinement; or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is a:
 - (A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience; or
 - (B) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience; or
 - (C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-

- time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or
- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Client record" means any record made of confidential information.
- (7) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (8) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (9) "Consent" means concurrence by a client or his legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (10) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (11) "Division Director" means the Director of the Division or his designee.
- (12) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(25) of this Rule for definition of medical emergency].
- (13) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(25) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (14) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (15) "Exploitation" means the use of a client or her/his resources including borrowing, taking or using personal property with or without her/his permission for another person's profit, business or advantage.
- (16) "Forensic Division" means the unit at Dorothea Dix Hospital which serves clients who are:
- (A) admitted for the purpose of evaluation for capacity to proceed to trial;
 - (B) found not guilty by reason of insanity;
 - (C) determined incapable of proceeding to trial; or
 - (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.
- (17) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation within the jurisdiction of the state facility. A grievance does not include complaints that can be resolved without delay by staff present. A complaint that is not resolved shall be filed and processed in accordance with the requirements of 10A NCAC 28B .0203.
- (18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.

- (19) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (20) "Interpreter services" means specialized communication services provided for the hearing impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- (21) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- (22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- (23) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (24) "Major physical injury" means damage caused to the body resulting in profuse bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- (25) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- (26) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- (27) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (28) "Neglect" means the failure to provide care or services necessary to maintain the mental and physical health of the client.
- (29) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (30) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- (31) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (32) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are

- designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.
- (33) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 28D, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.
- (34) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.
- (35) "Qualified professional" means, within the mh/dd/sas system of care, an individual who is:
- (A) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; or
 - (B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
 - (D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (36) "Regional alcohol and drug abuse treatment center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (37) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).
- (38) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (39) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (40) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (41) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (42) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35) of this Rule.
- (43) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment Program Maximum Security Ward in the Spruill Building at Dorothea Dix Hospital, the use of locked rooms is not considered seclusion for clients with criminal charges who are:
- (A) undergoing pretrial evaluations ordered by a criminal court;
 - (B) in treatment for restoration of capacity to proceed;
 - (C) in treatment to reduce violence risk; or
 - (D) considered to be an escape risk.

- (44) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.
- (45) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (46) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (47) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (48) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.
- (49) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.
- (50) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been assigned to a director, supervisor, administrator, or manager.
- (51) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147;
Eff. October 1, 1984;
Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Temporary Amendment Eff. November 1, 2001;
Amended Eff. April 1, 2003.

SECTION .0200 - HUMAN RIGHTS COMMITTEES

10A NCAC 28A .0201 PURPOSE OF HUMAN RIGHTS COMMITTEES

A human rights committee shall be established at each state facility to provide an additional safeguard for protecting the human, civil, legal and treatment rights of clients who, due to impairments resulting from mental retardation, mental illness or substance abuse, may be less able to articulate and exercise their legal entitlements than those not impaired.

History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28A .0202 MEMBERSHIP

(a) Members of human rights committees shall be appointed by the Secretary.

(b) Recommendations for committee appointments and the appointment process shall be as follows:

- (1) The State Facility Director shall maintain a schedule of the terms of appointment for committee members and shall request names of possible appointees from voluntary groups serving the mentally ill, mentally retarded or substance abusers, as appropriate, as well as from the Chairperson of the State Facility Human Rights Committee six months prior to the expiration of a committee member's term. The State Facility Director shall submit these nominations, as well as any additional nominations, to the appropriate deputy director in the Division five months prior to the expiration of the Committee member's term.
- (2) Within two weeks following receipt of the nominations, the Deputy Director shall submit the Committee and voluntary group recommendations for nominations, as well as any other nominations supported by the Deputy Director, to the Division Director.

- (3) The Division Director shall submit the committee and voluntary group recommendations, as well as any other nominations he supports, to the Secretary four months prior to the expiration of the Committee member's term of office.
 - (4) The Secretary shall contact his choices for potential appointees, explain committee member responsibilities and confirm appointments in writing.
 - (5) The Secretary shall notify the Division Director and the committee chairperson of confirmed committee appointments and the term of office for appointees two months prior to the expiration of the Committee member's term.
 - (6) The Division Director shall notify the State Facility Director of the appointment.
- (c) Appointments shall be made with an effort to consider the geographic distribution, race and sex composition of the Human Rights Committees.
- (d) Members shall represent only one of the organizations or professional groups indicated in Paragraphs (e), (f), (g), (h) and (i) of this Rule during any single term in their capacity as human rights committee members.
- (e) Each regional psychiatric hospital shall have a committee consisting of ten members, none of whom shall be currently employed by the Division or attorney general's office.
- (1) All members shall be knowledgeable about mental health and mental illness issues as evidenced by interest, experience or education.
 - (2) Appointments shall be made with an effort to consider representation of the needs and characteristics of the state facility clients.
 - (3) Appointees shall include one member from the North Carolina Mental Health Association; one member from the North Carolina Alliance for the Mentally Ill; and one member from the North Carolina Association for Retarded Citizens.
 - (4) Four members shall be appointed at large.
 - (5) At least one member shall be a client and at least one member shall be a family member.
 - (6) One member shall be a licensed attorney.
- (f) Each regional mental retardation center shall have a committee consisting of ten members, none of whom shall be currently employed by the Division.
- (1) Four of the Committee members shall include the legally responsible person of persons with mental retardation who may or may not reside in a state facility, persons with mental retardation, and at least one client of a regional mental retardation center.
 - (2) Three members shall be professionals from three different associated fields such as social work, education, psychology or medicine.
 - (3) One member shall be a licensed attorney.
 - (4) Two members shall be selected at large.
- (g) Each regional alcoholic rehabilitation center shall have a committee consisting of five members, none of whom shall be currently employed by the Division.
- (1) Two persons shall be members of voluntary groups representing the interests of persons having substance abuse problems.
 - (2) One person shall be a client or family member of a client of an alcoholic rehabilitation center.
 - (3) Two members shall be selected at large.
- (h) Wright School, Whitaker School and any other like state facility established and administered by the Division to serve emotionally disturbed children and adolescents each shall have a committee consisting of five members, none of whom shall be currently employed by the Division.
- (1) Two persons shall be members of voluntary groups representing the interest of children and adolescents with special needs.
 - (2) One person shall be the legally responsible person of a client of a state facility for emotionally disturbed children.
 - (3) Two members shall be selected at large.

(i) North Carolina Special Care Center at Wilson and any other like state facility established and administered by the Division shall have a committee consisting of five members, none of whom shall be currently employed by the Division.

- (1) All members shall be knowledgeable about mental health and nursing care issues as evidenced by interest, experience or education.
- (2) Four members shall be appointed at large.
- (3) At least one member shall be a client or family member of a client.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0203 EX OFFICIO MEMBERSHIP

(a) An internal client advocate may serve as a non-voting member of each human rights committee.

(b) In addition to the members appointed by the Secretary, the Chairperson may designate other non-voting ex officio members to assist the Committee. Ex officio members may be employees of the Division.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28A .0204 TERMS OF OFFICE

(a) All members shall be appointed to serve three year terms except for the initial terms at state facilities which did not have human rights committees established upon the original effective date of these rules.

(b) Initial appointments for each of the Committees established under Paragraph (a) of this Rule shall be as follows:

- (1) One member shall serve a four-year term, expiring June 30.
- (2) Two members shall serve a three-year term, expiring June 30.
- (3) One member shall serve a two-year term, expiring June 30.
- (4) One member shall serve a one-year term, expiring June 30.

(c) Members may be appointed for no more than two consecutive three-year terms.

(d) If a vacancy occurs due to death, resignation or disqualification, the Human Rights Committee Chairperson shall notify the State Facility Director who shall initiate procedures to fill the vacancy in accordance with Rule .0202(b) in this Section. Members appointed in this manner shall serve out the term of the member who created the vacancy and shall represent the category of membership represented by the member whose place they are selected to fill.

(e) Human rights committee members whose appointment terms have expired may continue to serve on the Committee until such time that the Committee member is notified by the State Facility Director that another appointment has been made and the Committee member's term of appointment has officially expired.

(f) If a member misses three consecutive meetings without being excused by the Chairperson, the Chairperson shall notify the Secretary. Missing three consecutive meetings without being excused by the Chairperson shall constitute good cause for being removed from the Committee.

(g) The Secretary shall have the authority to remove any member of a human rights committee from office for good cause.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0205 OFFICERS

- (a) Each human rights committee shall elect by a majority a chairperson to serve for a period of two years. No person shall serve more than two consecutive terms as chairperson. The chairperson shall be a committee member who does not work directly with clients at the state facility.
- (b) Other officers may be elected as needed based on a majority vote of the Committee.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28A .0206 MEETINGS

- (a) Each human rights committee shall meet at least monthly unless an alternative schedule is approved by the Secretary but in no case less than six times per year. Committees may meet more often as necessary at the call of the Chairperson. The chairperson shall call a meeting of the committee at any time such is requested by four or more members of a ten-member committee or two or more members of a five-member committee.
- (b) A majority of each committee shall constitute a quorum for the transaction of business.
- (c) Human rights committees as public bodies are subject to open meetings as specified in G.S. 143-318.9 through 143-318.12. Due to the nature of the deliberations of human rights committees, it is anticipated that some of the issues would be discussed in executive session in accordance with G.S. 143-318.11(a)(7) and (a)(12). The chairperson shall file a schedule of regular meetings with the Secretary of State as specified in G.S. 143-318.12.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;
Eff. October 1, 1984.*

10A NCAC 28A .0207 DUTIES

- (a) The duties of the Human Rights Committees are as follows:
 - (1) review of compliance with laws in G.S. 122C, Article 3, dealing with the rights of clients, and reviewing the state facility's compliance with the human rights rules in this Subchapter and Subchapter 28B through 28D of this Chapter;
 - (2) reviewing and assessing the efficiency of existing and proposed methods and procedures for protecting the rights of clients of their respective state facilities;
 - (3) serving as an independent review body to hear and make recommendations concerning alleged violations of the rights of individuals and groups brought by clients, client advocates, parents, guardians, state facility employees, or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
 - (4) reviewing programs and services that deal with the legal and human rights of clients;
 - (5) reviewing cases of alleged abuse, neglect or exploitation or failure to provide services of whatever nature brought by clients, client advocates, parents, guardians, state facility employees, or others, in compliance with Rule .0209 of this Section for any necessary review of the client record;
 - (6) reviewing cases brought by clients, client advocates, parents, guardians, state facility employees, or others regarding the use of seclusion, physical or mechanical restraint, intrusive or aversive procedures, electroconvulsive therapy, medication prescribed above recommended dosages as specified in 10A NCAC 28I .0300 or any procedures carried out against the will of the client. The Committee may determine the extent of the review, including but not limited to statistical review and individual case review involving a review in compliance with Rule .0209 of this Section of the client record;
 - (7) reviewing complaints, grievances or other client rights issues of concern brought by clients, client advocates, parents, guardians, state facility employees, or others in compliance with Rule .0209 of this Section for any necessary review of the client record; and
 - (8) reviewing any issues of concern brought by the State Facility Director, Division Director, a Deputy Director, or the Secretary.

- (b) The duties listed in Paragraph (a) of this Rule shall not be interpreted to allow human rights committees to concern themselves with the management of the respective state facilities except where there is an issue of violation of a client's rights.
- (c) Annually, by September 1, each committee shall submit, through the Division Director to the Secretary, a report of its activities, accomplishments, and recommendations for the previous year, July 1 through June 30.

History Note: Authority G.S. 122C-64; 131E-67; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28A .0208 PROCEDURES

- (a) There shall be a written agreement governing the relationship and responsibilities of the State Facility Director, Human Rights Committee and client advocate. Such agreement may be superseded by any written agreements between the Division and the Governor's Advocacy Council for Persons with Disabilities.
- (b) If the majority of the Human Rights Committee feels that an issue requires action, the Chairperson of the Committee shall submit a written statement regarding the issue to the State Facility Director and indicate a desired response date. The issue shall be brought to the attention of the State Facility Director. If the Committee is not satisfied with the actions of the State Facility Director, the issue shall be brought to the attention of the Division Director and the appropriate deputy director simultaneously. If the Committee is not satisfied with the action of the Division Director or the Deputy Director involved, the issue shall be brought to the attention of the Secretary.
- (c) If the majority of the Committee votes that an issue does not require action, but two or more members feel strongly that some action is necessary, these members may submit a minority report to the State Facility Director, the Division Director and Deputy Director, and the Secretary in the same manner as a majority decision.
- (d) In cases deemed appropriate by the Committee, steps in the communications procedure as outlined in Paragraph (b) of this Rule may be omitted, provided that the person in authority in each omitted step is notified in writing.
- (e) The Committee may also seek help in solving problems from the Governor's Advocacy Council for Persons With Disabilities, Governor's Advocacy Council on Children and Youth, the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, and the Council on Developmental Disabilities. In these cases, persons in authority at each step of the prescribed communications procedure as outlined in Paragraph (b) of this Rule shall be notified in writing. Minority report procedures, as outlined in Paragraph (c) of this Rule, shall be applicable in this procedure as well.

History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28A .0209 CONFIDENTIALITY

- (a) Committee members shall have access to the records of clients only upon written consent of the client or legally responsible person as specified in 10A NCAC 26B .0209 "Confidentiality Rules", division publication APSM 45-1. This document is available for inspection in each state facility or in the Publications Office of the Division. This right of access is granted so that the Committees may perform their duties of overseeing and monitoring the action of the state facility.
- (b) Committee members shall treat the client record as confidential information as specified in 10A NCAC 26B .0108.

History Note: Authority G.S. 122C-53(a); 122C-64; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28A .0210 LIMITATIONS ON REPRESENTATION

In order for a professional to be a member of a human rights committee he must agree not to accept a client of the state facility as a private client for remuneration for professional services on the client's behalf during the member's term. If a professional, while a member of the Committee, accepts such a client, then he becomes disqualified to serve on the Committee.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0211 STATE FACILITY RESPONSIBILITY

- (a) The State Facility Director shall provide necessary clerical and support services to the Human Rights Committee.
- (b) The State Facility Director shall provide an orientation to the state facility for new members of the Committee at the Chairperson's request.
- (c) The State Facility Director shall assure that the facility's Staff Development Services shall implement the Division's annual plan of training for human rights committee members.
- (d) The State Facility Director shall be responsible for the reimbursement of mileage expenses for members of the Committee who request financial assistance to attend regularly scheduled meetings.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. July 1, 1989.*

10A NCAC 28A .0212 DIVISION RESPONSIBILITY

- (a) The Division Director shall serve as the point of contact between the Committees and the Secretary.
- (b) The Division's Training Office, in conjunction with the Governor's Advocacy Council for Persons with Disabilities (GACPD), shall develop an annual plan of training for human rights committee members.
- (c) The Division Director shall provide collaboration opportunities for each state facility human rights committee and shall assure an opportunity for committee chairpersons to meet at least annually.
- (d) The Division Director shall provide written orientation materials for all new members. Written training materials shall cover at a minimum the structure and role of the Division; the role of State Facility Human Rights Committees; state statutes; and rules codified in the North Carolina Administrative Code regarding human rights and related areas of concern. Such materials shall be available in the Quality Assurance Section of the Division.

*History Note: Authority G.S. 122C-64; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. July 1, 1989.*

SECTION .0300 - INFORMING CLIENTS AND STATE FACILITY EMPLOYEES OF RIGHTS

10A NCAC 28A .0301 INFORMING CLIENTS OF RIGHTS

- (a) The State Facility Director shall assure that all clients and legally responsible persons are informed of the client's rights at the time of admission or not more than 24 hours after admission [with the exceptions specifically provided for in Paragraph (b) of this Rule]. The state facility shall develop a policy which includes, but is not limited to, the following:
 - (1) specifying who is responsible for informing the client;
 - (2) providing a written copy of rights to clients who can read and explaining the rights to all clients;
 - (3) documenting in the client record that rights have been explained to the client;
 - (4) posting copies of rights and the person or office to contact for information regarding rights in areas accessible to the client.

- (5) describing the role of the Human Rights Committee and internal client advocate and how to utilize their services;
- (6) informing the legally responsible person of a minor or incompetent adult client that he may request notification after any occurrence of the use of an intervention procedure as specified in 10A NCAC 28D .0203, .0204 and .0205; and
- (7) informing the competent adult client that he may designate an individual to receive notification, in accordance with G.S. 122C-53(a), after any occurrence of the use of an intervention procedure as specified in 10A NCAC 28D .0203, .0204 and .0205.

(b) If the client cannot be informed of his rights within 24 hours after admission because of his condition or if the legally responsible person cannot be notified within 24 hours after admission, then this exception and any alternative means of implementing this right shall be documented. However, the state facility may delay notifying the legally responsible person of client rights for up to 72 hours when necessary for week-end admissions.

*History Note: Authority G.S. 122C-51; 122C-53; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0302 INFORMING STATE FACILITY EMPLOYEES

The State Facility Director shall assure that all state facility employees are informed of the rights of clients and shall develop a policy which includes but is not limited to the following:

- (1) specifying who is responsible for informing new and existing state facility employees;
- (2) distributing written copies of client rights as specified in Article 3 of Chapter 122C to all state facility employees and obtaining documentation that state facility employees have read and understand the client rights;
- (3) obtaining documentation that qualified professionals on staff have read and understand client rights as specified in Article 3 of Chapter 122C of the N.C. General Statutes and regulations as specified in 10A NCAC 28A through 28D;
- (4) establishing a procedure for training or updating state facility employees' awareness of client rights as specified in Article 3 of Chapter 122C of the N.C. General Statutes, 10A NCAC 28A, 28B, 28C, and 28D, and through state facility policy at least annually and whenever changes occur. Such education shall be documented; and
- (5) identifying individuals who can be contacted to answer questions regarding rights.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28A .0303 NOTIFICATION ON GUARDIANSHIP

(a) The client shall be informed of the different aspects and policies concerning guardianship when the use of guardianship becomes an issue.

(b) The client shall be permitted to participate as fully as possible in all decisions that will affect him. State facility employees shall seek to preserve for the incompetent adult client the opportunity to exercise those rights that are within his comprehension as specified in G.S. 35A-1201(a)(4) and (5).

(c) The State Facility Director shall assure that incompetency proceedings are pursued for adult clients when the treatment team determines that the client is unable to make or communicate important decisions about his life. To the extent possible statutory proceedings for limited guardianship rather than full guardianship should be pursued.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28A .0304 INFORMING CLIENTS OF POLICIES

The State Facility Director shall assure that each client and the legally responsible person are informed of the following:

- (1) the state facility policy on reimbursement or criminal liability for personal or property damage caused by the client to the state facility, other clients, employees, visitors or their property;
- (2) the state facility policy on charges for treatment or habilitation services as consistent with 10A NCAC 28C .0310;
- (3) the state facility rules and regulations that the client is expected to follow and possible penalties for violations;
- (4) the state facility grievance procedure;
- (5) the state facility's authority to initiate, when appropriate, involuntary commitment procedures for a voluntary client; and
- (6) the state facility policy on search and seizure.

History Note: *Authority G.S. 122C-51; 131E-67; 143B-147;*
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28A .0305 RESEARCH

The State Facility Director shall assure that all research involving human subjects is conducted in accordance with accepted research practices and is reviewed according to 10A NCAC 26C .0200. Research that places human subjects at risk, except minimal risk research, shall be subject to the Department of Health and Human Services policy for the protection of human research subjects as codified in 45 C.F.R. 46, adopted pursuant to G.S. 150B-14(c).

History Note: *Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;*
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28A .0306 CONSENT TO PARTICIPATE IN RESEARCH

(a) The State Facility Director shall assure that all clients who participate in research, except minimal risk research, elect to do so after having received a full explanation of the purpose, potential benefits and risks of participation.

(b) Informed written consent shall be obtained from the client or legally responsible person for each new research project.

Whenever a client is adjudicated incompetent and is a ward of the state, or whenever a client adjudicated incompetent or a minor client objects to participation in a research project, the client shall not participate in the research project. Consent shall be documented in the client record and shall include:

- (1) client or legally responsible person's signature and date;
- (2) brief description of the research project;
- (3) length of consent, which shall not exceed six months without renewal;
- (4) notification that consent may be withdrawn at any time without penalty;
- (5) explanation of any potential risks and plans to reduce or address such risks;
- (6) signature and title of the investigator and date;
- (7) disclosure of any established alternative procedures that would probably achieve similar therapeutic goals as those anticipated through the research; and
- (8) a provision that the client or legally responsible person will be given notification of any significant changes in the research procedures which directly affect the client.

History Note: *Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;*
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

SUBCHAPTER 28B – CIVIL AND LEGAL RIGHTS

SECTION .0100 – GENERAL RIGHTS

10A NCAC 28B .0101 COMPETENCY OF ADULT CLIENTS

Each adult client has the right to be considered legally competent unless adjudicated incompetent under the provisions of Chapter 35A of the General Statutes; and each incompetent adult client has the right to be restored to legal competency as specified in Chapter 35A of the General Statutes.

*History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28B .0102 BASIC RIGHTS

- (a) Each client in a state facility has the right to exercise basic human rights as specified in G.S. 122C-51, 122C-52(c), 122C-54(e), 122C-57, 122C-58, 122C-61, and 122C-62.
- (b) Only those rights specified in G.S. 122C-62(b) and 122C-62(d) may be restricted by the state facility. Such restrictions shall be in accordance with G.S. 122C-62(e).

History Note: Authority G.S. 122C-51; 122C-52; 122C-54; 122C-57; 122C-58;
122C-61; 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0103 RELIGIOUS RIGHTS

- (a) Each client has the right to participate in religious worship as specified in G.S. 122C-62(b)(7) and 122C-62(d)(7).
- (b) Participation shall be voluntary, but worship opportunities, services, religious education programs, pastoral counseling, or pastoral visitation shall be accessible for those who choose to participate.
- (c) Clients shall be permitted to participate in religious services in the community unless otherwise limited in the treatment or habilitation plan.
- (d) Suitable space for religious worship shall be made available by the state facility.

*History Note: Authority G.S. 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

SECTION .0200 - LEGAL RIGHTS

10A NCAC 28B .0201 ACCESS TO LEGAL SERVICES

- (a) All clients have the right to contact and consult with legal counsel of their choice according to the provisions of G.S. 122C-62(a)(2) and 122C-62(c)(2).
- (b) Information regarding the availability of legal services shall be given to all clients and shall be posted in areas accessible to the clients. Information provided by legal assistance programs concerning the availability of their services for indigent clients shall be posted in areas accessible to the clients. Each State Facility Director shall ensure that all state facility employees are informed of the availability of legal services for clients in a manner deemed appropriate by the State Facility Director, including the right of clients to communicate and consult with attorneys.
- (c) Each State Facility Director shall designate locations where clients and attorneys may conduct their interviews in privacy.

History Note: Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0202 NONPROFIT LEGAL SERVICES ORGANIZATIONS

Each State Facility Director shall designate an interview room where clients may, at regularly scheduled hours, privately communicate and consult with an attorney employed by or affiliated with a nonprofit legal services organization. During these scheduled hours, any client who desires to consult with an attorney may do so without an appointment. Upon written request by a nonprofit legal services organization, such an interview room shall be made available in each building occupied by clients. The frequency of making such an interview room available and the hours it shall be available shall be at the discretion of the State Facility Director; however, such interview room shall be available at least twice per month. Information regarding the time and date when such legal services will be available and the specific location of such interview room shall be posted in areas accessible to the client in the buildings involved.

History Note: Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0203 STATE FACILITY GRIEVANCE PROCEDURE AND REPORTS

- (a) Each state facility shall have a written procedure to process clients' formal grievances in a fair, timely, and impartial manner. The grievance procedure shall specify that it is not intended to cover informal verbal expressions of dissatisfaction or discontent which can be resolved informally.
- (b) The grievance procedure shall include the following:
- (1) a provision stating that grievances may be filed on behalf of a client by:
 - (A) the client;
 - (B) the legally responsible person of a minor client or incompetent adult client;
 - (C) the internal client advocate; or
 - (D) any other competent adult, including a state facility employee, who has been designated by the client and given written consent to bring a grievance on his behalf;
 - (2) a provision requiring grievances to be filed in writing and a copy sent to the internal client advocate;
 - (3) a provision specifying the progressive steps of the grievance process and state facility employees by position responsible for hearing the grievance at each step. Such provision shall state whether the State Facility's Human Rights Committee shall be included in the progression. (The absence of such a provision shall in no way prevent clients from presenting their concerns to the Human Rights Committee at any time. Such a provision would simply include it in the routine progression.) The progression should begin at a level closest to the client such as the client's responsible professional and, if unresolved, progress through the organizational structure of the state facility. The treatment team and the State Facility Director shall be included in the progression;
 - (4) a provision specifying the number of days for action to be taken at each level;

- (5) a provision specifying required written documentation for the grievance including, at a minimum, a description of the grievance, all parties involved, dates and actions taken at each step and specifying state facility employees responsible for such documentation and where in administrative files the record of documentation shall be filed; and
 - (6) a provision stating that the State Facility Director shall make a final decision regarding the grievance before the client may request review of the decision by the Division according to Rule .0204 of this Section.
- (c) All final decisions relative to grievances filed on behalf of clients shall be reviewed by the Human Rights Committee whenever such review is in accordance with 10A NCAC 28A .0209.
- (d) The State Facility Director shall submit a written report at least annually to the Human Rights Committee and internal client advocates which documents the number, nature, and resolution of grievances at the state facility for the previous year.

History Note: Authority G.S. 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28B .0204 DIVISION DIRECTOR'S REVIEW OF GRIEVANCES

- (a) If a client or client's representative as specified in Rule .0203(b)(1)(D) of this Section is dissatisfied with the State Facility Director's decision in a grievance, the client or client's representative may request a review of the State Facility Director's decision by the Division.
- (b) The client or client's representative shall submit a written request for review of the decision to the appropriate deputy director of the Division (as indicated by the State Facility Director). The request shall indicate:
 - (1) a description of the grievance;
 - (2) action taken by the State Facility Director; and
 - (3) preferred action of the client.
- (c) The Deputy Director receiving the request for review of the decision shall notify the Division Director, Division's Assistant Director for quality assurance and any other deputy or assistant director whose responsibilities overlap in the area of the grievance.
- (d) The Deputy Director receiving the request shall collect information on the issue and make a determination in consultation with any other deputy or assistant director involved.
- (e) The Deputy Director shall make a recommendation to the Division Director within 10 working days from the date of the receipt of the request.
- (f) The Division Director, after appropriate consultation, shall issue a written decision to the requesting party within 20 working days from the original date of the receipt of the request by the Deputy Director.
- (g) The client or his legally responsible person may appeal the Division Director's decision by petitioning for a contested case hearing pursuant to Article 3 of G.S. 150B.

History Note: Authority G.S. 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28B .0205 DEPARTMENT REVIEW OF GRIEVANCE

- (a) The client or client's representative as specified in Rule .0203(b)(1)(D) of this Section may pursue further review by the Department by submitting a written request to the Secretary. Such written request shall indicate:
 - (1) a description of the grievance;
 - (2) action taken by the State Facility Director and Division Director; and
 - (3) preferred action of the client.
- (b) The Secretary shall conduct a review of the grievance and submit his decision in writing to the client or client's representative at least 30 days following receipt of the request. The client or his legally responsible person may appeal the Secretary's decision by petitioning for a contested case hearing pursuant to Article 3 of G.S. 150B.

History Note: Authority G.S. 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28B .0206 ACCESS TO INTERNAL CLIENT ADVOCATE

The State Facility Director shall assure each client access to an internal client advocate in accordance with G.S. 122C-62(a)(3) and 122C-62(c)(3).

*History Note: Authority G.S. 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28B .0207 CLIENT ADVOCATE ACCESS TO CONFIDENTIAL INFORMATION

- (a) Client advocate access to confidential information shall be in accordance with G.S. 122C-53(e), (f) and (g).
- (b) Whenever a minor client is admitted to a regional psychiatric hospital which provides educational services, the client advocate may have access to the educational records in accordance with G.S. 122C-53(a). The State Facility Director shall establish policies and procedures for obtaining consent upon admission of the minor client to the state facility, which allows the client advocate access to the educational records.

*History Note: Authority G.S. 122C-53; 122C-62; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28B .0208 DEATHS AND AUTOPSIES

- (a) The State Facility Director shall adopt a written policy, available to the client upon request, specifying procedures to be taken upon the death of a client which shall provide for:
 - (1) a physician's certification of the death as soon as possible;
 - (2) making reasonable efforts to locate the client's next of kin;
 - (3) notification of the State Facility Director and the internal client advocate;
 - (4) notification of the County Medical Examiner when the attending physician or State Facility Director (at the time of the client's death) determines that the death falls under the jurisdiction of the County Medical Examiner as specified in G.S. 130A-383 and 130A-389; and documentation of the Medical Examiner's report in the client record; and
 - (5) disposition of the body when no next of kin or interested individuals can be located and no funeral arrangements have been made, including notification of the Commission of Anatomy as specified in G.S. 130A-415.
- (b) A competent client, or incompetent adult client or minor client through his legally responsible person, has the right to prearrange his funeral at no expense to the state.
- (c) No autopsy shall be performed on the body of a deceased client unless permission has been given for the autopsy by the appropriate person as specified in G.S. 130A-398 or unless such autopsy is otherwise required or permitted by law as specified in G.S. 130A-389, 130A-399 or 130A-400.

*History Note: Authority G.S. 130A-383; 130A-389; 130A-398 through 130A-400; 130A-415; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

SECTION .0300 - LABOR RIGHTS

10A NCAC 28B .0301 EMPLOYMENT CONDITIONS

- (a) Each client who performs work which is of economic value to the state facility shall receive compensation for such work.
- (b) A state facility may allow the client to work for the facility only under the following conditions:
 - (1) if the work is part of the client's individual treatment or habilitation plan;
 - (2) if the work is performed voluntarily;

- (3) if the client is paid wages commensurate with the economic value of the work on the open market (except as specifically explained in Rule .0302 of this Section); and
- (4) if the work project complies with local, state and federal laws and regulations.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0302 VOLUNTARY NON-COMPENSATED WORK

The state facility may establish a policy allowing clients, upon their request, to do voluntary non-compensated work. The policy shall:

- (1) provide for protecting the client from abuse or exploitation;
- (2) provide for the work to be time limited and part of the client's treatment or habilitation plan;
- (3) provide that voluntary work performed by clients consists of tasks appropriate to the age or developmental level of the client;
- (4) provide for review by the legally responsible person of an incompetent adult or minor client or internal client advocate in all other cases of client volunteer work before the work is begun; and
- (5) prohibit substitution of voluntary non-compensated work for other more appropriate treatment or habilitation opportunities.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0303 PERSONAL HOUSEKEEPING

Limited housekeeping tasks in the client's personal living space may be required of each client without compensation.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984.

SECTION .0400 – NONDISCRIMINATION

10A NCAC 28B .0401 TITLE VI CIVIL RIGHTS ACT 1964

The State Facility Director shall assure that the services of the state facility are provided in compliance with the requirements specified in Title VI of the Civil Rights Act of 1964 and 45 C.F.R. 80 and other applicable laws regarding the prohibition of discrimination based on race, color, national origin, sex, or handicap.

History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28B .0402 DHHS DIRECTIVE - INTERPRETER SERVICES

The State Facility Director shall assure that the services of the state facility are provided in compliance with the requirements specified in the Department of Health and Human Services Directive, Subject: Provision of Interpreter Services for the Deaf, Number 37, Effective Date: June 1, 1987, adopted pursuant to G.S. 150B-14(c), establishing the provision of interpreter services for the deaf and hearing impaired.

*History Note: Authority G.S. 122C-51; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28B .0403 STATE AND FEDERAL REGULATIONS

The State Facility Director shall assure that the services of the state facility are provided in compliance with all applicable state and federal statutes and regulations regarding non-discrimination, including but not limited to discrimination against a handicapped person as specified in G.S. 168-1 through 168-23, G.S. 168A and Section 504 of the Rehabilitation Act (29 U.S.C.).

*History Note: Authority G.S. 122C-51; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

SUBCHAPTER 28C - DIGNITY AND RESPECT

SECTION .0100 - SAFE ENVIRONMENT

10A NCAC 28C .0101 PROTECTION FROM HARM

- (a) State facility employees and volunteers at a state facility shall protect clients from harm, abuse, neglect and exploitation in accordance with G.S. 122C-66.
- (b) State facility employees shall not subject a client to any sort of punishment, neglect, or indignity or inflict physical or mental abuse upon any client including, but not limited to, striking, burning, cutting, teasing, taunting, jerking, pushing, tripping or baiting a client.
- (c) State facility employees, visitors and clients other than mentally retarded clients in a facility, shall not engage in any offenses relating to another client as specified in G.S. 122C-65.
- (d) State facility employees shall use only that degree of force necessary to repel or secure a violent and aggressive client. The degree of force that is necessary depends upon the individual characteristics of the client (such as age, size and physical and mental health) and the degree of aggressiveness displayed by the client. The State Facility Director may establish policies on the use of force and specific techniques. State facility employees using specific physical intervention techniques shall be trained in their use.
- (e) State facility employees shall not borrow money from a client or a client's family or receive gratuity except a non monetary gift of nominal value from a client. The state facility employee shall not sell or buy goods or services to or from a client except through established state facility policy. The state facility shall provide safeguards for protecting the client from this type of exploitation and abuse.
- (f) State facility employees shall exercise all due precaution to protect each client from physical or mental abuse by other clients.
- (g) The State Facility Director shall establish policies to protect the client from exploitation by other clients by discouraging the loaning or borrowing of money and possessions between clients and by discouraging the selling and buying of goods or services between clients.

*History Note: Authority G.S. 122C-65; 122C-66; 122C-67; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0102 CORPORAL PUNISHMENT

Corporal punishment is prohibited, as specified in G.S. 122C-59.

*History Note: Authority G.S. 122C-59; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0103 REPORTING ABUSE, NEGLECT OR EXPLOITATION

- (a) The State Facility Director shall develop a written policy specifying procedures for reporting and investigating all cases of alleged or suspected abuse, neglect or exploitation occurring when the client is under the supervision of the state facility. The policy shall be in accordance with G.S. 122C-66 and shall include at least the following provisions:
- (1) specifications of the progressive steps in the reporting and investigation process for all cases of alleged or suspected abuse, neglect or exploitation, staff positions responsible for investigation, and time periods to be observed for each step;
 - (2) a requirement for immediate intervention by any state facility employee witnessing abuse, neglect or exploitation;
 - (3) a system of immediate reporting of any suspected abuse, neglect or exploitation which includes but is not limited to the internal client advocate and appropriate state facility employees and provisions for confidential reporting;

- (4) the arrangement for immediate medical evaluation where major physical injury is involved or suspected;
 - (5) the designation of a state facility employee or position to conduct a preliminary investigation, including the review of written reports by all state facility employees involved;
 - (6) in the event that a complete investigation is indicated, the notification of the State Facility Director, the legally responsible person of a minor or incompetent adult client, and the internal client advocate. The Human Rights Committee may be notified that there is a complete investigation indicated; however, Human Rights Committee involvement shall be in accordance with 10 NCAC 16G .0209.
 - (7) a requirement for immediate reporting of any alleged or suspected abuse, neglect or exploitation whenever there is a reasonable cause to believe that the client is in need of protective services (as defined in G.S. Chapter 108A, Article 6 and G.S. Chapter 7A, Article 44) to the county department of social services by the State Facility Director or designee as specified in G.S. Chapter 108A, Article 6 or G.S. Chapter 7A, Article 44;
 - (8) a provision to allow an independent investigation by the internal client advocate and Human Rights Committee, when in accordance with 10A NCAC 28A .0209, reporting directly to the State Facility Director; and
 - (9) a provision to ensure that all state facility employees remain aware of the procedures and are aware of their rights and responsibilities if they are witness to, or aware of, or accused of abuse, neglect or exploitation.
- (b) Cases of suspected abuse, neglect or exploitation occurring when the client is not under the direct or immediate supervision of the state facility shall be reported to the county department of social services by any state facility employee suspecting the abuse, neglect or exploitation as specified in G.S. Chapter 108A, Article 6 or G.S. Chapter 7A, Article 44.

History Note: Authority G.S. 7A, Article 44; 108A, Article 6; 122C-51; 122C-59; 122C-65; 122C-66; 122C-67; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. July 1, 1989.

10A NCAC 28C .0104 SAFE BUILDINGS AND GROUNDS

- (a) Each client in a state facility shall live and receive care, treatment, or habilitation in a safe and sanitary environment.
- (b) The State Facility Director shall assure the provision of a safe and sanitary environment which is in compliance with the sanitation, health and environmental safety codes of state and local authorities.
- (c) The State Facility Director shall have specific plans and shall develop and enforce policies designed to keep the state facility in good repair and operation in accordance with the needs of health, comfort, safety and well-being of the clients.

History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. July 1, 1989.

10A NCAC 28C .0105 MEALS

- (a) Each client in a state facility shall receive a balanced and nutritionally adequate daily diet.
- (b) Dietary services of the state facility shall adequately meet the individual dietary needs of the client and meet the preferences of the client to the extent possible.
- (c) The dietary service and dietary service personnel shall meet local and state codes.
- (d) The state facility dietary service shall serve at least three meals per day on a schedule which approximates a generally accepted morning, noon and evening meal.
- (e) Meals shall be served attractively.
- (f) Appropriate therapeutic feeding techniques shall be used if the client is unable to feed himself or herself.

History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28C .0106 REPORTING CLIENT INJURIES

Whenever a minor or incompetent adult client experiences a major physical injury, the legally responsible person shall be immediately notified. Whenever a competent adult experiences a major physical injury, the client's designated next of kin may be notified of the injury when such notification is in accordance with G.S. 122C-53(a).

*History Note: Authority G.S. 122C-51; 122C-53; 131E-67; 143B-147;
 Eff. July 1, 1989.*

SECTION .0200 - ESTHETIC AND HUMANE ENVIRONMENT

10A NCAC 28C .0201 STATE FACILITY ENVIRONMENT

(a) The State Facility Director shall assure the provision of an esthetic and humane environment which enhances the positive self-image of the client and preserves human dignity. This includes:

- (1) providing warm and cheerful furnishings;
- (2) providing flexible and humane schedules;
- (3) directing state facility employees to address clients in a respectful manner; and
- (4) providing adequate areas accessible to clients who wish to smoke tobacco and areas for non-smokers as requested.

(b) The State Facility Director shall also, to the extent possible, make every effort to:

- (1) provide a quiet atmosphere for uninterrupted sleep during scheduled sleeping hours; and
- (2) provide areas accessible to the client for personal privacy, for at least limited periods of time, unless determined inappropriate by the treatment team.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0202 ACTIVITIES

(a) Each state facility shall provide space, supervision and equipment for client activities and exercise in accordance with G.S. 122C-62(b)(5) and G.S. 122C-62(d)(5).

(b) The State Facility Director shall assure that clients have reasonable access to entertainment equipment in working order such as a television, radio, phonograph, and appropriate recreational equipment.

(c) Any imposed limitation on the client's freedom to exercise his rights in Paragraph (a) of this Rule by the responsible professional shall be documented in accordance with G.S. 122C-62(e).

*History Note: Authority G.S. 122C-62; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0203 PERSONAL LIVING SPACE

Each client in a state facility may suitably decorate his room, or portion of a multi-resident room, with respect to the client's choice, normalization principles, and with respect for the physical structure. The State Facility Director may establish written policies and justifications which limit this right for special admissions such as medical, surgical, forensic, or short-term admissions where admission is for less than 30 days.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0204 HEALTH, HYGIENE AND GROOMING

(a) The State Facility Director shall assure each client the right to dignity, privacy and humane care in the provision of personal health, hygiene and grooming care including, but not limited to:

- (1) individualized bathing schedules to promote privacy;
- (2) an opportunity for a shower or tub bath daily, or more often as needed;
- (3) the opportunity to shave every day;
- (4) access to the services of a barber or a beautician on a regular basis; and
- (5) provision of linens and towels, toilet paper and soap for all clients and other individual personal hygiene articles for indigent clients. Such other articles include but are not limited to toothpaste, toothbrush, sanitary napkins, tampons, shaving cream and shaving utensil.

(b) Bathtubs or showers and toilets which ensure individual privacy shall be available. All bathtubs and shower areas shall be divided by curtains, doors or partitions. Toilets shall be in separate stalls.

(c) Adequate toilets, lavatory and bath facilities equipped for use by clients with mobility impairments, shall be available.

*History Note: Authority G.S. 122C-51; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

SECTION .0300 - PRIVACY AND PERSONAL FREEDOM

10A NCAC 28C .0301 COMMUNICATION RIGHTS

(a) In order to ensure the protection of client rights specified in G.S. 122C-62(a)(1) and G.S. 122C-62(d)(2), each state facility shall post the state facility schedule for the collection and distribution of mail and packages in areas accessible to clients. Limited postage shall be made available to indigent clients. State facility employees shall provide assistance to clients as needed in sending and receiving correspondence. Such physical assistance may include writing letters, wrapping packages or reading letters to clients upon their request.

(b) Adult clients in state facilities shall have access to telephones in private areas in order to ensure the protection of the client right specified in G.S. 122C-62(b)(1). Access to telephones by minor clients in state facilities shall be in accordance with G.S. 122C-62(d)(1). State facility employees shall assist adult and minor clients in placing calls upon request of the client.

(c) In order to ensure the protection of client rights specified in G.S. 122C-62(b)(2) and G.S. 122C-62(d)(3), each state facility shall post visiting hours in areas accessible to clients. The State Facility Director may establish the same visiting hours for the entire state facility or different visiting hours for different client living areas within the state facility. Suitable areas indoors shall be made available for adult clients and visitors to visit in private, and minor clients and visitors to visit as free as possible from disturbance by other clients. The areas where clients may receive visitors may be specified by the State Facility Director.

(d) Clients being held at a state facility to determine capacity to proceed to trial pursuant to G.S. 15A-1002 may receive visitors as specified in G.S. 122C-62(b)(2) and G.S. 122C-62(d)(3). The following limitations shall be imposed in accordance with G.S. 122C-62(g); however, no limitations shall be imposed on visitations by those persons specified in G.S. 122C-62(a)(2), (a)(3), (c)(1), (c)(2), and (c)(3):

- (1) Each state forensic facility may establish a policy limiting visitations by:
 - (A) precluding visits for up to the first three days;
 - (B) imposing a visit duration limit; and
 - (C) limiting the number of visitors, as long as criteria are established making such limitations on an individual basis in order to promote the health, safety and welfare of the clients.
- (2) The client shall prepare a list of visitors whom he desires to see. Only those visitors specified by the client will be permitted to visit with the client. Clients shall be informed whenever a visitor arrives at the state facility who is not on the list of visitors designated by the client, and the client shall have the option to add the visitor to the list.
- (3) All visitors shall present proper identification upon request.
- (4) Visitors, other than the client's immediate family, clergyman and attorney, shall be approved for visitation by the client's responsible professional.

- (5) To ensure that no contraband is carried into the unit where the client is located, no purses, handbags or other items capable of concealing contraband will be permitted in the unit and visitors may be subject to routine searches.
- (e) Adult clients retain the rights specified in G.S. 122C-62(a)(1), (2) and (3) at all reasonable times. Minor clients retain the rights specified in G.S. 122C-62(c)(1), (2) and (3) at all reasonable times. These rights may not be limited or restricted.
- (f) Any imposed limitation or restriction on the client's freedom to exercise his rights as specified in G.S. 122C-62(b)(1), (2), (3) and (4) or G.S. 122C-62(d)(1), (2) and (3) by the responsible professional shall be documented in accordance with G.S. 122C-62(e).

*History Note: Authority G.S. 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0302 PERSONAL CLOTHING

- (a) All clients have the right to retain and wear their own clothes as specified in G.S. 122C-62(b)(6) and G.S. 122C-62(d)(6) except when such clothes are determined to be inappropriate to the treatment regimen by the responsible professional, and the reason for that determination is documented in accordance with G.S. 122C-62(e).
- (b) The State Facility Director has an obligation to supply an adequate allowance of clothing to clients whom the state facility deems indigent and who cannot provide their own clothing. Such clothing shall be seasonable, of proper size, of the character worn by the client's peers in the community, and in good condition.
- (c) Personal clothing left by discharged clients shall be held for a 30-day period, during which time efforts shall be made to contact the client. If the clothing is not claimed by the client within 30 days, it shall be handled in accordance with state facility policy.
- (d) Clothing provided by the state facility may be kept by the client upon discharge from the state facility, at the State Facility Director's discretion.
- (e) The State Facility Director shall make provision for the laundering of client clothing.

*History Note: Authority G.S. 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0303 PERSONAL POSSESSIONS

- (a) Client access to personal possessions shall be in accordance with G.S. 122C-62(b)(6) and G.S. 122C-62(d)(6) except when the possessions are determined to be potentially dangerous articles or otherwise inappropriate to the treatment regimen by the responsible professional and the reason for the determination is documented in accordance with G.S. 122C-62(e). Each state facility may develop a policy which restricts any of the following potentially dangerous articles to ensure the safety of clients: scissors, cigarette lighters, matches, razors, mirrors, pocket knives, switch blades, or products which contain potentially abusive substances.
- (b) Personal possessions deposited with the state facility for safe-keeping shall be made available to the client upon request at reasonable intervals, unless the client is an incompetent adult or a minor, in which case these items shall be made available to the incompetent adult client or minor or legally responsible person upon request by the legally responsible person. These items shall be returned to the client or legally responsible person upon discharge of the client from the state facility, except as specified in Rules .0307, .0308, or .0309 of this Section.

*History Note: Authority G.S. 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0304 STORAGE AND PROTECTION OF CLOTHING AND POSSESSIONS

- (a) The state facility shall make a concerted effort to protect the client's personal clothing and possessions from theft, damage, destruction, loss, and misplacement. This includes but is not limited to the following:

- (1) advising the client, upon admission, to deposit jewelry and other valuable articles with the state facility for safe-keeping;
- (2) providing individual locked storage space for the client's own use in accordance with G.S. 122C-62(b)(10) and G.S. 122C-62(d)(8) which will hold a reasonable amount of clothing and other personal possessions. Staff assistance shall be available if the client is unable due to physical or mental inability to manipulate the locking mechanism, except when such storage space is determined to be inappropriate to the treatment regimen by the responsible professional and the reason for that determination is documented in accordance with G.S. 122C-62(e);
- (3) developing an inventory of each client's clothing and personal possessions upon admission and reviewing and updating it annually; and
- (4) discretely marking personal clothing items and, for clients being provided long term care, discretely marking clothing items provided by the state facility with the client's name. Clients who elect to launder their own clothing shall not be required to have clothing marked but shall be informed that they thereby assume the risk of possible loss.

(b) The State Facility Director shall establish policies and procedures for managing clothing and possessions under the state facility's exclusive control. The policy shall also outline procedures for determining loss or damage and for determining any appropriate replacement or reimbursement in accordance with the rules in 10A NCAC 01C, Section .0300.

*History Note: Authority G.S. 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0305 SOCIAL INTERACTION

The state facility shall establish policies to assure the provision of suitable opportunities for the client's social interaction with members of the same and opposite sex and to actively seek, unless specifically contraindicated, interaction with non-handicapped persons other than staff.

*History Note: Authority G.S. 122C-51; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0306 CONFIDENTIALITY

State facility employees shall comply with G.S. 122C-52 through G.S. 122C-56 and the confidentiality rules codified in 10A NCAC 26B and available in "Confidentiality Rules" division publication APSM 45-1. This document is available for inspection in each state facility or in the Publications Office of the Division.

*History Note: Authority G.S. 122C-52 through 122C-56; 131E-67; 143B-10; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28C .0307 SEARCH AND SEIZURE

(a) In keeping with 10A NCAC 28A Section .0300, which requires all state facilities to have a plan for explaining rights to both clients and state facility employees, state facility employees shall notify the client and his legally responsible person of the policy on search and seizure, including the provisions of this Rule and Rules .0308 and .0309 of this Section at the time of admission.

(b) Authorized searches by state facility employees are as follows:

- (1) State facility employees may search the client and the client's possessions at the time of the client's admission to the state facility. At the time of admission, the client may place personal items in a storage area which is secure. The state facility employees shall record in the personal property inventory the items placed in storage which shall be counter-signed by the client. The original of the personal property inventory shall be maintained by the state facility, and a copy shall be given to the client or his legally responsible person.

- (2) State facility employees may search a client and the client's possessions when the client is returning to the state facility from an off-campus visit or after the client has received visitors, when it is reasonable to believe a client may have items in his possession that are dangerous, illegal or otherwise prohibited by the state facility.
- (3) State facility employees may search a client, the client's possessions or the client's living area if the state facility employees have good, substantial and reliable cause to believe that the client has been drinking or using drugs or has dangerous or stolen articles or substances. Situations justifying such a search may include, but are not necessarily limited to, the following:
 - (A) when drinking, drug abuse or possession of dangerous articles or substances has been witnessed by state facility employees, reported by another client or another reliable informant, or is clearly indicated by surrounding circumstances;
 - (B) when inappropriate changes in the client's behavior are observed or reported, such as slurred speech, ataxia, odor of alcohol, and disruptive behaviors, excluding expected changes due to prescribed psychotropic medication;
 - (C) when a breathalyzer test or urine drug screen results in a positive reading [A breathalyzer test or drug screen will be administered by nursing staff when appropriate as indicated by the circumstances in Subparagraphs (b)(3)(A) and (B) of this Rule or ordered by a licensed physician.]; or
 - (D) when a stolen item has been witnessed by state facility employees, reported by another client or other reliable informant or is clearly indicated by surrounding circumstances and no criminal charges are anticipated.

(c) Scope of Searches. Except as provided in Rule .0309 of this Section, the procedures outlined in this Rule and Rule .0308 of this Section are intended for internal security, to protect the state facility from civil liability, and to provide an inventory of client's personal property, and are not intended for purposes of criminal prosecution.

- (1) Searches by state facility employees shall be conducted only on the state facility premises and may include searching a client, a private or semi-private room and any surrounding area, closet, bed, chest of drawers, ceiling and personal effects of the client.
- (2) Searches by state facility employees may include state facility buildings and grounds.
- (3) Only physicians may perform body cavity searches if it is determined that there is probable cause to do so. Such a search shall be performed in the presence of a member of the nursing staff. The physician or member of the nursing staff shall be of the same sex as the client.

(d) Search Procedure.

- (1) All searches shall be authorized in writing by the State Facility Director or state facility employee in charge of the state facility at the time of the incident except:
 - (A) searches conducted pursuant to Subparagraph (b)(1) or (2) of this Rule; or
 - (B) searches performed when state facility employees have a reasonable suspicion that a client has in his possession a weapon or instrument making the client presently dangerous to himself or others, and this danger is imminent as to render prior written authorization impracticable.
- (2) At least two state facility employees shall be present during a search. An internal client advocate may be present during a search. A state facility employee of the same sex as the client shall be present during a search.
- (3) A client affected by a proposed search, other than those specified in Subparagraphs (b)(1) and (2) of this Rule, shall be notified before the search is conducted and shall be given the opportunity to be present during the search. Individual locked storage spaces shall only be searched when the client is present unless there is an immediate danger of personal injury.
- (4) Searches conducted in accordance with this Rule shall be documented in the client record.

(e) Disposition of Seized Property.

- (1) If personal property seized in a search includes fire-arms or ammunition, the state facility employees shall contact the local law enforcement agency for advice regarding disposition of the property. The State Facility Director shall notify the appropriate deputy director regarding disposition of the personal property.
- (2) If personal property seized in a search includes controlled substances illegally possessed (contraband), the substances shall be sent to the state facility pharmacy to be held for destruction under the supervision of the Department of Justice.
- (3) If personal property seized in a search includes any alcoholic beverages, the beverages shall be sent to the State Facility Director for proper disposition.

- (4) If personal property seized during a search includes prescription drugs in properly labeled containers; over-the-counter medications; dangerous items such as knives, scissors, razors, or glue; grooming aids that contain alcohol; or other items prohibited by the state facility, such items may be stored and returned to the client at the time of discharge. Such stored items shall be listed on the personal property inventory. A copy of the personal property inventory shall be given to the client or his legally responsible person.
 - (5) Items belonging to the minor client or minor's legally responsible person which are seized during a search of the minor or the minor's possessions, with the exception of the items specified in Subparagraph (e)(2) of this Rule, shall be given to the legally responsible person if he or she so desires.
- (f) Use of the search procedure specified in this Rule shall be subject to review by the Human Rights Committee.

*History Note: Authority G.S. 90-101; 122C-58; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0308 SEARCH OF UNIT/WARD

- (a) The entire unit, ward or parts of the unit, ward and building may be searched by state facility employees if there is good, substantial and reliable cause to believe that a threatening situation exists that may be dangerous to the client or state facility employee. At the forensic unit at Dorothea Dix Hospital, routine searches may be conducted periodically in accordance with the provisions of Paragraphs (b) through (f) of this Rule.
- (b) The appropriate unit or ward director or designated supervisory staff on duty shall give written authorization (based on facts of justification and what they expect to find from the search) for a search to be conducted. Written authorization will include scope of search.
- (c) Clients affected by a proposed search shall be notified at the time of search and shall be given the opportunity to be present during the search of the immediate area, unless this is not practical due to the dangerousness of the situation or because the client is not on the state facility premises. Individual locked storage spaces shall only be searched when the client is present unless there is an immediate danger of personal injury. Clients not present when a search is conducted shall be informed that a search took place when they return to their unit or ward.
- (d) The search must be conducted by no less than two state facility employees. Reasonable efforts shall be made to notify an internal client advocate prior to the search unless there exists an imminent danger which does not permit time for such notification. In all cases, an internal client advocate shall be notified of the search.
- (e) When confiscated items can be attributed to a particular client, written justification and authorization for the search shall be entered in an incident report filed with the State Facility Director's office. The search and findings shall be documented in the client record.
- (f) An inventory of confiscated items shall be made and kept on file with a copy of the inventory given to the client or his legally responsible person if ownership is determined.

*History Note: Authority G.S. 122C-58; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28C .0309 ISSUANCE OF A SEARCH WARRANT

If there is probable cause to believe that a client is in possession of the following items and if criminal prosecution of the client is anticipated, such information shall be conveyed by proper affidavit to a magistrate or other official authorized to determine whether a search warrant should be issued:

- (1) contraband or otherwise unlawfully possessed items including, but not limited to, illegal drugs, weapons, or stolen items;
- (2) an item which constitutes evidence of a criminal offense; or
- (3) an item which constitutes evidence of the identity of a person participating in a criminal offense.

*History Note: Authority G.S. 15A-241 through 15A-245; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990.*

10A NCAC 28C .0310 CLIENT'S PERSONAL FUNDS

(a) Where the state facility has been designated as representative payee or when the client is a Medicaid recipient, provisions in Paragraphs (b) through (g) of this Rule shall be interpreted in accordance with any requirements of the funding source.

(b) In accordance with G.S. 122C-62(b)(8) and G.S. 122C-62(d)(9), the maximum amount of money clients will be allowed to have and spend will be determined by the treatment/habilitation team or will be determined by each unit in a state facility based upon the needs and abilities of the client population. Client requests to retain money above the maximum allowable amount shall be reviewed by the client treatment/habilitation team and the decision shall be documented in the client record.

Any imposed limitation or restriction by the responsible professional on the client's right to have and spend the sum of money determined to be reasonable shall be documented in accordance with G.S. 122C-62(e).

(c) The state facility shall develop written policies and procedures which:

- (1) allow the client to deposit and withdraw money from a personal fund account;
- (2) regulate the receipt and distribution of funds in personal fund accounts;
- (3) provide for the receipt of deposits in personal fund accounts from friends, relatives or others and withdrawal by the client;
- (4) provide for the keeping of adequate financial records on all transactions affecting funds on deposit in personal fund accounts;
- (5) provide for the issuance of receipts to persons depositing or withdrawing funds; and
- (6) provide for a periodic accounting of personal fund accounts.

(d) Where the client, due to his physical or mental condition, is unable to manage his own funds, the legally responsible person may request that the State Facility Director provide for the handling of a portion of funds in the personal fund account for a personal needs allowance of the client. If the State Facility Director provides for the handling of these funds, proper accounting must be maintained for such monies. The funds must be kept separate from any operating funds of the state facility.

(e) The state facility may not deduct from a personal fund account any amount owed or alleged to be owed to the state facility or a state facility employee or visitor to the state facility or other client of the state facility for damages done or alleged to have been done by the client to the state facility, property of the state facility, state facility employee, visitor or other client, unless the client or his legally responsible person authorizes the deduction.

(f) The state facility may not deduct from a personal fund account any amount owed or alleged to be owed to the state facility for treatment or habilitation services unless the client or legally responsible person authorizes the deduction. The state facility may develop a policy for deduction from personal fund accounts for treatment or habilitation services which provides for this authorization by the client or legally responsible person upon or subsequent to admission of the client.

(g) Competent adult clients may maintain or invest their money in other than personal fund accounts at the state facility. This shall include, but not be limited to, investment of funds in interest bearing accounts.

*History Note: Authority G.S. 122C-51; 122C-58; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

SUBCHAPTER 28D - TREATMENT OR HABILITATION RIGHTS

SECTION .0100 - RIGHT TO TREATMENT OR HABILITATION

10A NCAC 28D .0101 APPROPRIATE EVALUATION AND TREATMENT OR HABILITATION

(a) Each client except day clients shall receive a prompt and comprehensive physical and brief mental status examination, including laboratory evaluation where appropriate, within 24 hours after admission to the state facility. Comprehensive psychological or developmental evaluations shall be performed when needed, as determined by the treatment/habilitation team. The type and dates of all examinations shall be documented in the client record. There must be a physical examination of the client before ordering medication except in an emergency.

(b) In addition to the treatment rights specified in G.S. 122C-57(a), all handicapped clients have a right to habilitation and rehabilitation as specified in G.S. 168-8.

(c) Each client shall receive evaluation and treatment/habilitation in accordance with G.S. 122C-57(b), G.S. 122C-60 and G.S. 122C-61. Evaluation and treatment/habilitation shall be provided in the least restrictive environment.

History Note: Authority G.S. 122C-51; 122C-57; 122C-60; 122C-61; 122C-211; 122C-221; 122C-231; 122C-241; 122C-266; 122C-285; 131E-67; 143B-147; 168-8; Eff. October 1, 1984; Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28D .0102 MEDICAL AND DENTAL CARE

(a) The State Facility Director shall assure access to prompt, adequate and necessary medical and dental care and treatment to the client for physical and mental ailments and injuries and for the prevention of illness or disability as specified in G.S. 122C-61(1). "Necessary" may be determined in light of the client's length of stay and condition. Short term clients shall be apprised of other medical and dental conditions and informed of appropriate medical and dental care.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice. The medical care shall be performed under appropriate supervision of licensed physicians and the dental care shall be performed under appropriate supervision of licensed dentists.

(c) Each client shall receive physical and dental examinations at least annually.

(d) In cases of medical emergency or necessity:

- (1) if the necessary equipment or expertise is not available at the state facility, the attending physician shall arrange treatment at an appropriate medical facility;
- (2) if the client is at an unreasonable distance from his home facility, he shall be taken to a nearer appropriate hospital or clinic; and
- (3) if the events in Subparagraphs (d)(1) or (2) of this Rule occur, the State Facility Director shall assure that those persons specified in G.S. 122C-206(e) are notified.

History Note: Authority G.S. 122C-57; 122C-61; 122C-206; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28D .0103 INDIVIDUALIZED TREATMENT OR HABILITATION PLAN

(a) The state facility shall provide qualified professionals to formulate and supervise implementation of the treatment/habilitation plan in accordance with G.S. 122C-57(a).

(b) Each client shall be encouraged and helped to attend the treatment/habilitation team meeting and to actively and meaningfully participate in the formulation of his treatment or habilitation plan. The legally responsible person of a minor or incompetent adult client shall also be encouraged to attend. The amount of participation by the client or legally responsible person shall be documented in the client record. The internal client advocate shall be allowed to attend the treatment/habilitation team meeting in accordance with G.S. 122C-53(g).

- (c) Each client may, upon request, have an in-house review of his individual treatment or habilitation plan or request the opinion of another person at no cost to the state.
- (d) The client's treatment or habilitation plan shall be reviewed at least quarterly by the treatment/habilitation team.
- (e) A discharge plan shall be formulated in accordance with Rule .0105 of this Section.
- (f) Upon request, a copy of the client's treatment or habilitation plan or an interpretive letter shall be furnished to the legally responsible person of an incompetent adult client or legally responsible person of a minor client except for minor clients in alcohol or drug rehabilitation programs as specified in 42 C.F.R. Part 2 or when minors are receiving treatment upon their own consent in accordance with G.S. 90-21.5.
- (g) The treatment/habilitation team shall inform the client of the availability of his treatment/habilitation plan and shall provide the client with a copy of his treatment/habilitation plan upon request by the client when filed in accordance with G.S. 122C-53(c).

History Note: Authority G.S. 90-21.5; 122C-51; 122C-53; 122C-57; 122C-61; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28D .0104 TRANSFER

When transferring clients, the State Facility Director shall follow the procedures specified in G.S. 122C-206 and division publication "Transfer of Clients Between State Facilities, APSM 45-1", adopted pursuant to G.S. 150B-14(c). The Division publication is available for inspection in each state facility or in the Publications Office of the Division.

History Note: Authority G.S. 122C-206; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28D .0105 DISCHARGE

- (a) When a state facility discharges a client, each client shall have a discharge plan as specified in G.S. 122C-61(2) unless the client:
 - (1) is receiving respite services;
 - (2) escapes or breaches the conditions of a conditional release;
 - (3) is unanticipatedly discharged by the court following district court hearing; or
 - (4) is immediately discharged upon request of the client or legally responsible person.
- (b) The discharge plan shall:
 - (1) be formulated by qualified professionals;
 - (2) inform the client of where and how to receive treatment or habilitation services in the community;
 - (3) identify continuing treatment or habilitation needs, and address issues such as food, housing, and employment;
 - (4) involve the appropriate area program, with consent of the client or his legally responsible person or in accordance with G.S. 122C-55(a) or G.S. 122C-63; and
 - (5) be provided to the client or legally responsible person as specified in G.S. 122C-61(2).
- (c) When the client is unexpectedly discharged by the court in hearing subsequent to the initial hearing, the client's discharge plan shall contain at least the following:
 - (1) address and phone number of the agency in the community where follow-up services can be provided, including name of contact person in Department of Social Services if food and housing are issues;
 - (2) current medications, if applicable; and
 - (3) recommendations for continued care in anticipated problem areas.

(d) With the exception of the State Hospital Director who shall follow the provisions of 10A NCAC 28F .0113, the State Facility Director in each of the other state facilities shall establish written policies and procedures to ensure that reasonable efforts are made to assist the client in obtaining needed services in the community upon discharge or placement. The policy shall include the designation of qualified professional staff to assist clients in establishing contact with the appropriate area program and furnishing information to the area program with the client or legally responsible person's consent or as permitted by G.S. 122C-55(a).

*History Note: Authority G.S. 122C-55; 122C-61; 122C-63; 122C-132; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.*

10A NCAC 28D .0106 CONSENT

(a) Consents required in Sections .0200, .0300 and .0400 in this Subchapter shall be obtained in writing or verbally over the telephone.

(b) Written consent of the client or his legally responsible person shall be obtained whenever possible. Information which is necessary to adequately inform the client shall be documented in the client record and shall include the following:

- (1) name of the procedure or treatment and its purpose expressed in laymen's terms;
- (2) evidence that the benefits, risks, possible complications and possible alternative methods of treatment have been explained to the client or his legally responsible person;
- (3) notification that the consent may be withdrawn at any time without reprisal;
- (4) specific length of time for which consent is valid;
- (5) when anesthesia is indicated, permission to administer a specified type of anesthesia;
- (6) permission to perform the procedure or treatment;
- (7) when applicable, authorization for the examination and disposal of any tissue or body parts that may be removed; and
- (8) signature of the client or his legally responsible person on written authorizations.

(c) Whenever written consent cannot be obtained in a timely manner, verbal (telephone) consent may be obtained from the legally responsible person. The legally responsible person shall be asked to sign a written authorization and return it to the state facility but the treatment or procedure may be administered in accordance with the verbal consent. Verbal consent shall be witnessed by two staff members and documented in the client record. The client record shall also include documentation specifying the reason why written consent could not be obtained.

*History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;
Eff. July 1, 1989;
Amended Eff. April 1, 1990.*

SECTION .0200 – PROTECTIONS REGARDING CERTAIN PROCEDURES

10A NCAC 28D .0201 LEAST RESTRICTIVE ALTERNATIVE AND PROHIBITED PROCEDURES

(a) Each facility shall provide services/supports that promote a safe and respectful environment. These include:

- (1) using the least restrictive and most appropriate settings and methods;
- (2) promoting coping and engagements skills that are alternatives to injurious behavior towards self or others;
- (3) providing choices of activities meaningful to the clients serviced/supported; and
- (4) sharing of control over decisions with the client/legally responsible person and staff.

(b) The use of a restrictive intervention procedure designed to reduce a behavior shall always be accompanied by actions designed to insure dignity and respect during and after the intervention. These include:

- (1) using the intervention as a last resort; and
- (2) employing the intervention by people trained in its use.

(c) Each state facility shall develop policies relative to prohibited interventions. Such policies shall specify:

- (1) those interventions which have been prohibited by statute or rule which shall include:
 - (A) any intervention which would be considered corporal punishment under G.S. 122C-59;
 - (B) the contingent use of painful body contact;
 - (C) substances administered to induce painful bodily reactions exclusive of Antabuse;
 - (D) electric shock (excluding medically administered electroconvulsive therapy);
 - (E) insulin shock; and
 - (F) psychosurgery; and
 - (2) those interventions specified in this Subchapter determined by the state facility director to be unacceptable for use in the state facility. Such policies shall specify interventions prohibited by funding sources including the use of seclusion or the emergency use of isolation time out in an ICF/MR facility.
- (d) In addition to the procedures prohibited in Paragraph (c) of this Rule, the state facility director may specify other procedures which shall be prohibited.

History Note: Authority G.S. 122C-51; 122C-57; 122C-59; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10A NCAC 28D .0202 ELECTROCONVULSIVE THERAPY

- (a) The treatment/habilitation team may recommend the use of electroconvulsive therapy.
- (b) Before electroconvulsive therapy can be utilized two licensed physicians, one of whom shall be clinically privileged to perform electroconvulsive therapy, shall approve a written plan, which includes indication of need, specific goals to be achieved, methods for measuring treatment efficacy, and indications for discontinuation of treatment. In addition, electroconvulsive therapy shall not be administered to any client under age 18 unless, prior to the treatment, two independent psychiatric consultants with training or experience in the treatment of adolescents have examined the client, consulted with the responsible state facility psychiatrist and have written and signed reports which document concurrence with the use of such treatment. For clients under the age of 13, such reviews shall be conducted by child psychiatrists.
- (c) The internal client advocate shall be informed at the time of the decision to utilize electroconvulsive therapy whenever the legally competent client requests such notification or when proposed for use with minor clients or adults adjudicated incompetent.
- (d) Electroconvulsive therapy shall not be initiated without prior consent in accordance with G.S. 122C-57(f).
- (e) If the adult client is determined to be de facto incompetent by the treatment/habilitation team and is determined to need electroconvulsive therapy, legal guardianship procedures shall be initiated and consent requirements of Paragraph (d) of this Rule shall be met.
- (f) All electroconvulsive therapy shall be administered in accordance with generally accepted medical practice and shall be documented in the client record.
- (g) The State Facility Director shall maintain a statistical record of the use of electroconvulsive therapy which shall include, but not be limited to, the number of treatments by client, unit or like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the Division Director on a monthly basis.

History Note: Authority G.S. 122C-51; 122C-56; 122C-57; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28D .0203 GENERAL POLICIES REGARDING INTERVENTIVE PROCEDURES

- (a) This Rule governs the policies and requirements regarding the use of the following interventions:
 - (1) seclusion;
 - (2) physical restraint including:
 - (A) mechanical restraint; or
 - (B) manual restraint;
 - (3) isolation time-out;
 - (4) exclusionary time-out for more than 15 minutes;

- (5) time-out for more than one hour;
 - (6) protective devices when used for behavioral control;
 - (7) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;
 - (8) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and
 - (9) overcorrection which the client resists.
- (b) The state facility director shall develop policies and procedures for those interventions determined to be acceptable for use in the state facility. Such policies and procedures shall include that:
- (1) positive alternatives and less restrictive alternatives are considered and used whenever possible prior to the use of seclusion, physical restraint or isolation time-out; and
 - (2) consideration is given to the client's physical and psychological well-being before, during and after utilization of a restrictive intervention, including:
 - (A) review of the client's health history or the comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;
 - (B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of physical restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;
 - (C) continuous monitoring of the client's physical and psychological well-being by an individual trained in the use of cardiopulmonary resuscitation during the use of manual restraint; and
 - (D) continued monitoring of the client's physical and psychological well-being by an individual trained in the use of cardiopulmonary resuscitation for a minimum of 30 minutes subsequent to the termination of a restrictive intervention;
 - (3) procedures for ensuring that the competent adult client or legally responsible person of a minor client or incompetent adult client is informed in a manner he or she can understand:
 - (A) of the general types of intrusive interventions that are authorized for use by the state facility; and
 - (B) that the legally responsible person can request notification of each use of an intervention as specified in this Rule, in addition to those situations required by G.S. 122C-62;
 - (4) provisions for humane, secure and safe conditions in areas used for the intervention, such as ventilation, light and a room temperature consistent with the rest of the state facility;
 - (5) attention paid to the need for fluid intake and the provision of regular meals, bathing and the use of the toilet. Such attention shall be documented in the client record; and
 - (6) procedures for assuring that when an intervention as specified in this Rule has been used with a client three or more times in a calendar month, the following requirements are met:
 - (A) A treatment/habilitation plan shall be developed within 10 working days of the third intervention. The treatment/habilitation plan shall include, but not be limited to:
 - (i) indication of need;
 - (ii) specific description of problem behavior;
 - (iii) specific goals to be achieved and estimated duration of procedures;
 - (iv) specific early interventions to prevent tension from escalating to the point of loss of control whenever possible;
 - (v) consideration, whenever possible, for client's preference for the type of physical restraint to be used;
 - (vi) specific procedure(s) to be employed;
 - (vii) specific methodology of the intervention;
 - (viii) methods for measuring treatment efficacy;
 - (ix) guidelines for discontinuation of the procedure;
 - (x) the accompanying positive treatment or habilitation methods which shall be at least as strong as the negative aspects of the plan;
 - (xi) description and frequency of debriefing, if determined to be clinically necessary;
 - (xii) specific limitations on approved uses of the intervention per episode, per day and requirements for on-site assessments by the responsible professional; and

- (xiii) description of any requirements in Rule .0206 of this Section to be incorporated into the plan;
- (B) In emergency situations, with the approval of the state facility director, the treatment/habilitation team may continue to use the intervention until the planned intervention is addressed in the treatment/habilitation plan;
- (C) The treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable, and document such explanation in the client record;
- (D) Before implementation of the planned intervention, the treatment/habilitation team, with the participation of the client and legally responsible person if applicable, shall approve the treatment/habilitation plan and consent shall be obtained as specified in Rule .0210(e) in this Section;
- (E) The use of the intervention shall be reviewed at least monthly by the treatment/habilitation team and at least quarterly, if still in effect, by a designee of the state facility director. The designee of the state facility director may not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record;
- (F) Treatment/habilitation plans which include these interventions shall be subject to review by the Human Rights Committee in compliance with confidentiality rules as specified in 10A NCAC 28A;
- (G) Each treatment/habilitation team shall maintain a record of the use of the intervention. Such records or reports shall be available to the Human Rights Committee and internal client advocate within the constraints of 10A NCAC 26B .0209 and G.S. 122C-53(g);
- (H) The state facility director shall follow the Right to Refuse Treatment Procedures as specified in Section .0300 of this Subchapter; and
- (I) The interventions specified in this Rule shall never be the sole treatment modality designed to eliminate the target behavior. The interventions are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.

(c) Whenever the interventions specified in this Subchapter other than seclusion, physical restraint or isolation time-out result in the restriction of a right specified in G.S. 122C-62(b) and (d), the procedures specified in G.S. 122C-62(e) shall be followed. The requirements for restriction of rights associated with the use of seclusion, physical restraint or isolation time-out are specified in Paragraph (f) of Rule .0206 of this Section.

(d) The state facility director shall assure by documentation in the personnel records that state facility employees who authorize interventions shall be qualified professionals and state facility employees who implement interventions shall be trained and shall demonstrate competence in the area of such interventions, as well as in the use of alternative approaches.

(e) The state facility director shall maintain a statistical record that reflects the frequency and duration of the individual uses of interventions specified in this Rule. This statistical record shall be made available to the Human Rights Committee and the Division at least quarterly.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. November 1, 1993; July 1, 1989;
 Temporary Amendment Eff. January 1, 2001;
 Temporary Amendment Expired October 13, 2001;
 Amended Eff. April 1, 2003.*

10A NCAC 28D .0204 INDICATIONS FOR USE OF SECLUSION AND ISOLATION TIME-OUT

Seclusion and isolation time-out shall be used only:

- (1) in those situations specified in G.S. 122C-60;
- (2) after less restrictive measures have been attempted and have proven ineffective. Less restrictive measures that shall be considered include:
 - (a) counseling;
 - (b) environmental changes;
 - (c) education techniques; and
 - (d) interruptive or re-direction techniques; and
- (3) after consideration of the client's physical and psychological well-being as specified in Rule .0203(b) of this Section.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10A NCAC 28D .0205 INDICATIONS FOR USE OF PHYSICAL RESTRAINTS

Physical restraints shall be used only:

- (1) in those situations specified in G.S. 122C-60;
- (2) after consideration of the client's physical and psychological well-being as specified in Rule .0203(b) of this Section; and
- (3) after a less restrictive alternative has been attempted or has been determined and documented to be clinically inappropriate or inadequate to avoid injury. Less restrictive alternatives that shall be considered include but are not limited to:
 - (a) counseling;
 - (b) environmental changes;
 - (c) education techniques; and
 - (d) interruptive or re-direction techniques.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; April 1, 1990; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10A NCAC 28D .0206 PROCEDURES: SECLUSION, PHYSICAL RESTRAINTS, OR ISOLATION TIME OUT

(a) This Rule delineates the procedures to be followed for use of seclusion, physical restraint or isolation time-out in addition to the procedures specified in Rule .0203 of this Section.

(b) This Rule governs the use of physical or behavioral interventions which are used to terminate a behavior or action in which a client is in imminent danger of injury to self or other persons or when property damage is occurring that poses imminent risk of danger, of injury or harm to self or others, or which are used as a measure of therapeutic treatment. Such interventions include seclusion, physical restraint and isolation time-out.

(c) If determined to be acceptable for use within the state facility, the state facility director shall establish written policies and procedures that govern the use of seclusion, physical restraint or isolation time-out which shall include the following:

- (1) techniques for seclusion, physical restraint or isolation time-out;
- (2) provision for required debriefing for emergency use of seclusion, physical restraint or isolation time-out;
- (3) provision, to both new clinical and habilitation staff as part of in-service training, and as a condition of continued employment, for those authorized to use or apply intrusive interventions which shall include, but not be limited to:

- (A) competency-based training and periodic reviews on the use of seclusion, physical restraint or isolation time-out; and
 - (B) skills for less intrusive interventions specified in Rules .0203 and .0204 of this Section;
 - (4) process for identifying, training and assessing the competence of state facility employees who are authorized to use such interventions;
 - (5) provisions that a responsible professional shall:
 - (A) meet with the client and review the use of the intervention as soon as possible but at least within one hour after the initiation of its use;
 - (B) verify the inadequacy of positive alternatives and less restrictive intervention techniques;
 - (C) document in the client record evidence of approval or disapproval of continued use; and
 - (D) inspect to ensure that any devices to be used are in good repair and free of tears and protrusions;
 - (6) procedures for documenting the intervention which occurred to include, but not be limited to:
 - (A) consideration that was given to the physical and psychological well-being of the client prior to the use of the restrictive intervention;
 - (B) the rationale for the use of the intervention which addresses attempts at and inadequacy of positive alternatives and less restrictive intervention techniques; this shall contain a description of the specific behaviors justifying the use of seclusion, physical restraint or isolation time-out;
 - (C) notation of the frequency, intensity and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;
 - (D) description of the intervention and the date, time and duration of its use;
 - (E) estimated amount of additional time needed in seclusion, physical restraint or isolation time-out;
 - (F) signature and title of the state facility employee responsible for the use of the intervention;
 - (G) the time the responsible professional met with the client; and
 - (H) description of the debriefing and planning with the client and the legally responsible person, if applicable, as specified in Subparagraph (c)(2) of this Rule, or Subpart (b)(6)(A)(xi) of Rule .0203 of this Section, to eliminate or reduce the probability of the future use of restrictive interventions; and
 - (7) procedures for the notification of others to include:
 - (A) those to be notified as soon as possible but no more than one working day after the behavior has been controlled to include:
 - (i) the treatment/habilitation team, or its designee, after each use of the intervention;
 - (ii) a designee of the State Facility Director; and
 - (iii) the internal client advocate, in accordance with the provisions of G.S. 122C-53(g); and
 - (B) immediate notification of the legally responsible person of a minor client or an incompetent adult client unless she/he has requested not to be notified.
- (d) Seclusion, physical restraint and isolation time-out shall not be employed as coercion, punishment or retaliation or for the convenience of staff or due to inadequate staffing or be used in a manner that causes harm or pain to the client. Care shall be taken to minimize any physical or mental discomfort in the use of these interventions.
- (e) Whenever a client is in seclusion, physical restraint or isolation time-out, the client's rights, as specified in G.S. 122C-62, are restricted. The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for restriction of rights.
- (f) Whenever seclusion, physical restraint or isolation time-out is used more than three times in a calendar month:
- (1) a pattern of behavior has developed and future emergencies can be reasonably predicted;
 - (2) dangerous behavior can no longer be considered unanticipated; and
 - (3) emergency procedures shall be addressed as a planned intervention in the treatment/habilitation plan.
- (g) In addition to the requirements in this Rule, additional safeguards as specified in Rule .0208 of this Section shall be initiated whenever:
- (1) a client exceeds spending 40 hours in emergency seclusion, physical restraint or isolation timeout in a calendar month; or one episode in which the original order is renewed for up to a total of 24 hours in accordance with the limits specified in Subparagraph (l)(8) of this Rule; or
 - (2) seclusion, physical restraint or isolation time-out is:
 - (A) used as a measure of therapeutic treatment as specified in G.S. 122C-60; and
 - (B) limited to specific planned behavioral interventions designed for the extinction of dangerous, aggressive or undesirable behaviors.

(h) The written approval of the State Facility Director or designee shall be required when the original order for seclusion, physical restraint or isolation time-out is renewed for up to a total of 24 hours in accordance with the limits specified in Subparagraph (l)(8) of this Rule.

(i) Standing orders or as needed (PRN) orders shall not be used to authorize the use of seclusion, physical restraint or isolation time-out.

(j) A state facility employee shall remove the client from seclusion, physical restraint or isolation time-out and seek medical attention immediately if monitoring of the physical and psychological well-being of the client indicates there is a risk to health or safety.

(k) The client shall be removed from seclusion, physical restraint or isolation time-out when the client no longer demonstrates the behavior which precipitated the seclusion, physical restraint or isolation time-out; however, if the client is unable to gain self-control within the time frame specified in the authorization, a new authorization shall be obtained.

(l) Whenever seclusion, physical restraint or isolation time-out are used on an emergency basis prior to inclusion in the treatment/ habilitation plan, the following procedures shall be followed:

- (1) A state facility employee authorized to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.
- (2) A qualified professional may authorize the continued use of seclusion, physical restraint or isolation time-out for up to one hour from the initial employment of the intervention if the qualified professional:
 - (A) has experience and training in the use of seclusion, physical restraint or isolation time-out; and
 - (B) has been approved to employ and authorize such interventions.
- (3) If a qualified professional is not immediately available to conduct a face-to-face assessment of the client, but after discussion with the state facility employee, the qualified professional concurs that the intervention is justified for longer than 15 minutes, then the qualified professional:
 - (A) may verbally authorize the continuation of the intervention for up to one hour;
 - (B) shall meet with and assess the client within one hour after authorizing the continued use of the intervention; and
 - (C) shall immediately consult with the professional responsible for the client's treatment/habilitation plan, if the intervention needs to be continued for longer than one hour.
- (4) The responsible professional shall authorize the continued use of seclusion, physical restraint or isolation time-out for periods over one hour.
- (5) If the responsible professional is not immediately available to conduct a clinical assessment of the client but, after consideration of the physical and psychological well-being of the client and discussion with the qualified professional, concurs that the intervention is justified for longer than one hour the responsible professional may verbally authorize the continuation of the intervention until an on-site assessment of the client can be made. However, if such authorization cannot be obtained, the intervention shall be discontinued.
- (6) If the responsible professional and the qualified professional are the same person, the documentation requirements of this Rule may be done at the time of the documentation required by Subparagraph .0206(d)(5) of this Section.
- (7) The responsible professional, or if the responsible professional is unavailable, the on-service or covering professional, shall meet with and assess the client within three hours after the client is first placed in seclusion, physical restraint or isolation time-out, and document:
 - (A) the reasons for continuing seclusion, physical restraint or isolation time-out; and
 - (B) the client's response to the intervention. In addition, the responsible professional shall provide an evaluation of the episode and propose recommendations regarding specific means for preventing future episodes. Clients who have been placed in seclusion, physical restraint or isolation time-out and released in less than three hours shall be examined by the responsible professional who authorized the intervention no later than 24 hours after the episode.
- (8) Each written order for physical restraint, seclusion or isolation time-out is limited to four hours for adult clients; two hours for children and adolescent clients ages nine to 17; or one hour for clients under the age of nine. The original order shall only be renewed in accordance with these limits for up to a total of 24 hours.
- (9) Each incident shall be reviewed by the treatment team, which shall include possible alternative actions and specific means for preventing future episodes.

(m) While the client is in seclusion, physical restraint or isolation time-out, the following precautions shall be followed:

- (1) Whenever a client is in seclusion:
 - (A) periodic observation of the client shall occur at least every 15 minutes to assure the safety of the client. Observation shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client;
 - (B) attention shall be paid to the provision of regular meals, bathing and the use of the toilet; and
 - (C) such observation and attention shall be documented in the client record.
 - (2) Whenever a client is in physical restraint, the facility shall provide:
 - (A) the degree of observation needed to assure the safety of the client placed in physical restraint. The degree of observation needed is determined at the time of application of the physical restraint after consideration of the following:
 - (i) the type of physical restraint used;
 - (ii) the individual client's situation, including physical and psychological well-being; and
 - (iii) the existence of any specific manufacturer's warning concerning the safe use of a particular product.

Observation shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client. In no instance shall observation be less frequent than at 15-minute intervals.
 - (B) attention to the provision of regular meals, bathing and the use of the toilet; and
 - (C) documentation of the above observation and attention in the client record.
 - (3) Whenever a client is in isolation time-out there shall be:
 - (A) a state facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time-out;
 - (B) continuous observation and verbal interaction with the client when necessary to prevent tension from escalating; and
 - (C) documentation of such observation and verbal interaction in the client record.
- (n) After a restrictive intervention is utilized, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, as specified in Subparagraph (d)(2) of this Rule, or Subpart (b)(6)(A)(xi) of Rule .0203 of this Section, to eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted as appropriate to the level of cognitive functioning of the client.
- (o) Reviews and reports on the use of seclusion, physical restraint or isolation time-out shall be conducted as follows:
- (1) the State Facility Director or designee shall review all uses of seclusion, physical restraint or isolation time-out and investigate unusual patterns of utilization to determine whether such patterns are unwarranted. At least quarterly, the State Facility Director or designee shall review all uses of seclusion and physical restraint to monitor effectiveness, identify trends and take corrective action where necessary.
 - (2) each State Facility Director shall maintain a log which includes the following information on each use of seclusion, physical restraint or isolation time-out:
 - (A) name of the client;
 - (B) name of the responsible professional;
 - (C) date of each intervention;
 - (D) time of each intervention;
 - (E) duration of each intervention;
 - (F) name of the state facility employee who implemented the restrictive intervention;
 - (G) date and time of the debriefing and planning conducted with the client and the legally responsible person if applicable and staff to eliminate or reduce the probability of the future use of restrictive interventions; and
 - (H) negative effects of the restrictive intervention, if any, on the physical and psychological well-being of the client.
- (p) The facility shall collect and analyze data on the use of seclusion and physical restraint. The data collected and analyzed shall reflect for each incident:
- (1) the type of procedure used and length of time employed;
 - (2) alternatives considered or employed; and
 - (3) the effectiveness of the procedure or alternative employed.
- The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends and take corrective action where necessary. The facility shall make the data available to the Secretary of the Department of Health and Human Services upon request.

(q) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion, physical restraint or isolation time-out at the client's request; however, the procedures in Paragraphs (a) through (p) of this Rule shall apply.

History Note: Authority G.S. 122C-51; 122C-53; 122C-57; 122C-60; 122C-62; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1994; January 4, 1994; November 1, 1993; April 1, 1990;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Amended Eff. April 1, 2003.

10A NCAC 28D .0207 PROTECTIVE DEVICES

(a) Whenever protective devices that cannot be removed at will by the client are utilized, the state facility shall:

- (1) assure that the protective device shall be used only to promote the client's physical safety;
- (2) assure that the factors putting the client's physical safety at risk are fully explored and addressed in treatment planning with the participation of the client and legally responsible person if applicable;
- (3) document the utilization of protective device in the client's nursing care plan, when applicable, and treatment/habilitation plan;
- (4) document what positive alternatives and less restrictive alternatives were considered, whether those alternatives were tried, and why those alternatives were unsuccessful;
- (5) assure that the protective device is used only upon the written order of a qualified professional that specifies the type of protective device and the duration and circumstances under which the protective device is used;
- (6) assure and document that the staff applying the protective device is trained and has demonstrated competence to do so;
- (7) inspect to ensure that the devices are in good repair and free of tears and protrusions;
- (8) determine, at the time of application of the protective device, the degree of observation needed to assure the safety of those placed in restraints. The type of protective device used, the individual patient situation, and the existence of any specific manufacturer's warning concerning the safe use of a particular product shall all be considered in determining the degree of observation needed. Observation shall include direct line of sight or the use of video surveillance. In no instance shall observation be less frequent than at 30-minute intervals.
- (9) assure that whenever the client is restrained and subject to injury by another client, a state facility employee shall remain present with the client continuously.
- (10) assure that the person is released as needed, but at least every two hours;
- (11) re-evaluate need for and impact on client of protective device at least every 30 days; and
- (12) assure that observations and interventions shall be documented in the client record.

(b) In addition to the requirements specified in Paragraph (a) of this Rule, protective devices used for behavioral control shall comply with the requirements specified in Rule .0203 of this Section.

History Note: Authority G.S. 122C-51; 122C-57; 143B-147;
Eff. October 1, 1984;
Amended Eff. November 1, 1993; July 1, 1989;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002.

10A NCAC 28D .0208 INTERVENTIONS REQUIRING ADDITIONAL SAFEGUARDS

(a) The interventions specified in this Rule present a significant risk to the client and therefore require additional safeguards. These procedures shall be followed in addition to the procedures specified in Rule .0203 of this Section.

(b) The following interventions are designed for the primary purpose of reducing the incidence of aggressive, dangerous or self injurious behavior to a level which will allow the use of less intrusive treatment/habilitation procedures. Such interventions include the use of:

- (1) seclusion, restraints, or isolation time out employed as a measure of therapeutic treatment;
- (2) seclusion, restraints, or isolation time out used on an emergency basis more than 40 hours in a calendar month or more than one episode of 24 hours;

- (3) unpleasant tasting foodstuffs;
 - (4) planned non-attention to specific undesirable behaviors when the target behavior is health threatening;
 - (5) contingent deprivation of any basic necessity;
 - (6) contingent application of any noxious substances which include but are not limited to noise, bad smells or splashing with water; and
 - (7) any potentially physically painful procedure or stimulus which is administered to the client for the purpose of reducing the frequency or intensity of a behavior.
- (c) Such interventions shall never be the sole treatment modality for the elimination of target behavior.
- (d) The intervention shall always be accompanied by positive treatment or habilitation methods which shall include, but not be limited to:
- (1) the deliberate teaching and reinforcement of behaviors which are non-injurious;
 - (2) the improvement of conditions associated with noninjurious behaviors such as an enriched educational and social environment; and
 - (3) the alteration or elimination of environmental conditions which are reliably correlated with self-injury.
- (e) Prior to the implementation of any planned use of the intervention the following written approvals and notifications shall be obtained. Documentation in the client record shall include:
- (1) approval of the plan by the treatment/habilitation team;
 - (2) that each client whose treatment/habilitation plan includes interventions with reasonably foreseeable physical consequences shall receive an initial medical examination and periodic planned monitoring by a physician;
 - (3) that the treatment/habilitation team shall inform the internal client advocate that the intervention has been planned for the client and the rationale for utilization of the intervention.
 - (4) the treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable.
 - (5) the prior written consent of the client or his legally responsible person shall be obtained except for those situations specified in Rule .0206(h)(1) in this Section. If the client or legally responsible person refuses the intervention, the State Facility Director shall follow the right to refuse treatment procedures as specified in this Subchapter;
 - (6) that the plan shall be reviewed and approved by a review committee, designated by the State Facility Director, which shall include that:
 - (A) at least one member of the review committee shall be qualified through experience and training to utilize the planned intervention; and
 - (B) no member of the review committee shall be a member of the client's treatment team.
 - (7) that the treatment/habilitation plan may be reviewed and approved by the State Facility Director;
 - (8) if any of the persons or committees specified in Subparagraphs (e)(1), (2), (4), (5), or (6) of this Rule do not approve the continued use of a planned intervention, the planned intervention shall be terminated. The State Facility Director shall establish an appeal mechanism for the resolution of any disagreement over the use of the intervention.
- (f) Neither the consents nor the approvals specified in Paragraph (e) of this Rule shall be considered valid for more than six months. The treatment/habilitation team shall re-evaluate the use of the intervention and obtain the client's and legally responsible person's consent for continued use of the intervention.
- (g) The plan shall be reviewed at the next meeting of the Human Rights Committee within the constraints of 10A NCAC 28A .0209. The Committee, by majority vote, may recommend approval or disapproval of the plan to the State Facility Director or may abstain from making a recommendation. If the State Facility Director does not agree with the decision of the Committee, the Committee may appeal the issue to the Division in accordance with the provisions of 10A NCAC 28A .0208.
- (h) The intervention shall be used only when the treatment/habilitation team has determined and documented in the client record the following:
- (1) that the client is engaging in behaviors that are likely to result in injury to self or others;
 - (2) that other methods of treatment or habilitation employing less intrusive interventions are not appropriate;
 - (3) the frequency, intensity and duration of the target behavior, and the behavior's probable antecedents and consequences; and
 - (4) it is likely that the intervention will enable the client to stop the target behavior.

(i) The treatment/habilitation team shall designate a state facility employee to maintain accurate and up-to-date written records on the application of the intervention and accompanying positive procedures. These records shall include at a minimum the following:

- (1) data which reflect the frequency, intensity and duration with which the targeted behavior occurs (scientific sampling procedures are acceptable);
- (2) data which reflect the frequency, intensity and duration of the intervention and any accompanying positive procedures; and
- (3) data which reflect the state facility employees who administered the interventions.

(j) The interventions shall be evaluated at least weekly by the treatment team or its designee and at least monthly by the Director of Clinical Services or the State Facility Director. The designee of the State Facility Director or Director of Clinical Services shall not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record.

(k) During the use of the intervention, the Human Rights Committee shall be given the opportunity to review the treatment/habilitation plan within the constraints of 10A NCAC 28A .0209.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147;
Eff. November 1, 1993;
Amended Eff. July 1, 1994.*

10A NCAC 28D .0209 TRAINING: EMPHASIS ON ALTERNATIVES TO RESTRICTIVE INTERVENTIONS

(a) Facilities shall implement policies and practices that emphasize the use of alternatives to seclusion, physical restraint and isolation time-out.

(b) Prior to providing services to people with disabilities, staff including service providers, employees, students or volunteers, shall demonstrate competence by successfully completing training in communication skills and other strategies for creating an environment in which the likelihood of imminent danger of abuse or injury to a person with disabilities or others, or to property is prevented.

(c) Provider agencies shall establish training based on state competencies, monitor for internal compliance and demonstrate they acted on data gathered.

(d) The training shall be competency based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(e) Formal refresher training shall be completed at least annually by each service provider.

(f) Content of the training that the service provider plans to use shall be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.

(g) Staff shall demonstrate competence in the following core areas:

- (1) knowledge and understanding of the people being served;
- (2) recognizing and interpreting human behavior;
- (3) recognizing the effect of internal and external stressors that may affect people with disabilities;
- (4) strategies for building positive relationships with people with disabilities;
- (5) recognizing cultural, environmental and organizational factors that may affect people with disabilities;
- (6) recognizing the importance, and assisting people with disabilities in making decisions about their life;
- (7) skills in assessing individual risk for escalating behavior;
- (8) communication strategies for defusing and de-escalating potentially dangerous behavior; and
- (9) positive behavioral supports (providing means for people with disabilities to choose activities which directly oppose or replace behaviors which are unsafe).

(h) Service providers shall maintain documentation of initial and refresher training for at least three years.

- (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
- (2) The Division of MH/DD/SAS may request and review this documentation at any time.

(i) Instructor Qualifications and Training Requirements:

- (1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.
- (2) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.

- (3) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
- (4) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(5) of this Rule.
- (5) Acceptable instructor training programs shall include but not be limited to presentation of:
 - (A) understanding the adult learner;
 - (B) methods for teaching content of the course;
 - (C) methods for evaluating trainee performance; and
 - (D) documentation procedures.
- (6) Trainers shall have coached experience teaching a training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out at least one time, with a positive review by the coach.
- (7) Trainers shall teach a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out at least once annually.
- (8) Trainers shall complete a refresher instructor training at least every two years.
- (j) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where attended; and
 - (C) instructor's name; and
 - (2) The Division of MH/DD/SAS may request and review this documentation at any time.
- (k) Qualifications of Coaches:
 - (1) Coaches shall meet all preparation requirements as a trainer.
 - (2) Coaches shall teach at least three times the course which is being coached.
 - (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.
- (l) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S 143B-147;
 Temporary Adoption Eff. February 1, 2001;
 Temporary Adoption Expired October 13, 2001;
 Amended Eff. April 1, 2003.*

10A NCAC 28D .0210 TRAINING IN SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME-OUT

- (a) Seclusion, physical restraint and isolation time-out may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained at least annually and have demonstrated competence.
- (b) Prior to providing direct care to people with disabilities whose treatment/habilitation plan includes restrictive interventions, staff including service providers, employees, students or volunteers, shall complete training in the use of seclusion, physical restraint and isolation time-out and shall not use these interventions until the training is completed and competence is demonstrated.
- (c) A prerequisite for taking this training is demonstrating competence by completion of training in preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.
- (d) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.
- (e) Formal refresher training shall be completed by each service provider periodically (minimum annually).
- (f) Content of the training that the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Paragraph (g) of this Rule.
- (g) Acceptable training programs shall include, but not be limited to, presentation of:
 - (1) refresher information on alternatives to the use of seclusion, physical restraint and isolation time-out;
 - (2) guidelines on when to intervene (understanding imminent danger to self and others);
 - (3) emphasis on safety and respect for the rights and dignity of all persons involved (using concepts of least restrictive interventions and incremental steps in an intervention);
 - (4) strategies for the safe implementation of seclusion, physical restraint and isolation time-out;

- (5) the use of emergency safety interventions which include continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of restraint throughout the duration of the restrictive intervention;
 - (6) prohibited procedures;
 - (7) debriefing strategies, including importance and purpose; and
 - (8) documentation methods and procedures.
- (h) Service providers shall maintain documentation of initial and refresher training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcomes (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
 - (2) The Division of MH/DD/SAS may request and review this documentation at any time.
- (i) Instructor Qualifications and Training Requirements:
 - (1) Trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing and eliminating the need for seclusion, physical restraint and isolation time-out.
 - (2) Trainers shall demonstrate competence by scoring 100% on testing in a training program teaching the use of seclusion, physical restraint and isolation time-out.
 - (3) Trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program.
 - (4) The training shall be competency-based, include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course. The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(6) of this Rule.
 - (5) The content of the instructor training the service provider plans to employ shall be approved by the Division of MH/DD/SAS pursuant to Subparagraph (i)(6) of this Rule.
 - (6) Acceptable instructor training programs shall include, but not be limited to, presentation of:
 - (A) understanding the adult learner;
 - (B) methods for teaching content of the course;
 - (C) evaluation of trainee performance; and
 - (D) documentation procedures.
 - (7) Trainers shall be retrained at least annually and demonstrate competence in the use of seclusion, physical restraint and isolation time-out, as specified in Paragraph (a) of this Rule.
 - (8) Trainers shall be currently trained in CPR.
 - (9) Trainers shall have coached experience in teaching the use of seclusion, physical restraint and isolation time-out at least two times with a positive review by the coach.
 - (10) Trainers shall teach a program on the use of seclusion, physical restraint and isolation time-out at least once annually.
 - (11) Trainers shall complete a refresher instructor training at least every two years.
- (j) Service providers shall maintain documentation of initial and refresher instructor training for at least three years.
 - (1) Documentation shall include:
 - (A) who participated in the training and the outcome (pass/fail);
 - (B) when and where they attended; and
 - (C) instructor's name.
 - (2) The Division of MH/DD/SAS may request and review this documentation at any time.
- (k) Qualifications of Coaches:
 - (1) Coaches shall meet all preparation requirements as a trainer.
 - (2) Coaches shall teach at least three times the course which is being coached.
 - (3) Coaches shall demonstrate competence by completion of coaching or train-the-trainer instruction.
- (l) Documentation shall be the same preparation as for trainers.

*History Note: Authority G.S 143B-147;
 Temporary Adoption Eff. February 1, 2001;
 Temporary Adoption Expired October 13, 2001;
 Eff. April 1, 2003.*

SECTION .0300 - RIGHT TO REFUSE TREATMENT

10A NCAC 28D .0301 THERAPEUTIC AND DIAGNOSTIC PROCEDURES

(a) In addition to the treatment procedures specified in G.S. 122C-57(f), other intrusive procedures which are not routine medical diagnostic or treatment procedures shall require the express and informed written consent of the client or his legally responsible person prior to their initiation except in medical emergencies. Such procedures shall include but are not limited to the following:

- (1) procedures that introduce radioactive dyes;
- (2) hyperalimentation;
- (3) endoscopy;
- (4) lumbar puncture;
- (5) prescribing and administration of the following drugs:
 - (A) Antabuse;
 - (B) Clonidine when used for non-FDA approved uses; and
 - (C) Depo-Provera when used for non-FDA approved uses; and
- (6) neuroleptic drug therapy following the diagnosis of tardive dyskinesia or after the symptoms of tardive dyskinesia have appeared as observed by using a standardized abnormal involuntary movement rating scale.

(b) Non-emergency surgery, and other therapeutic and diagnostic procedures as specified in Paragraph (a) of this Rule, shall not be performed on a client unless the client or his legally responsible person has been provided with sufficient information concerning the proposed procedure in order to make an educated decision about the treatment measure and has consented in writing.

(c) Emergency surgery may be performed on a client without consent as specified in Paragraph (b) of this Rule only when:

- (1) immediate action is necessary to preserve the life or health of the client;
- (2) the client is unconscious or otherwise incapacitated so as to be incapable of giving consent;
- (3) in the case of a minor or incompetent adult client, the consent of the legally responsible person cannot be obtained within the time necessitated by the nature of the medical emergency, subject to the provisions of G.S. 90-21.1 et seq.; and
- (4) the attending physician and a second physician certify in writing that the situation requires emergency surgery.

*History Note: Authority G.S. 90-21.1; 90-21.13; 122C-51; 122C-57; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28D .0302 INTRUSIVE INTERVENTIONS

When a client or his legally responsible person refuses treatment or habilitation utilizing interventions specified in Section .0200 of this Subchapter in a non-emergency situation, the following process shall be followed for both voluntary and involuntary clients:

- (1) The responsible professional shall speak to the client or legally responsible person, if applicable, and attempt to explain his assessment of the client's condition, the reasons for recommending the intervention, the benefits and risks, and the advantages and disadvantages of alternative courses of action. If the client or his legally responsible person still refuses to participate and the responsible professional still believes that these interventions are a necessary part of the client's treatment or habilitation plan:
 - (a) The responsible professional shall tell the client and the legally responsible person, if applicable, that the matter will be discussed at a meeting of the client's treatment/habilitation team;
 - (b) If the client's condition permits, the responsible professional shall invite the client and the legally responsible person, if applicable, to attend the meeting of the treatment/habilitation team; and
 - (c) The responsible professional shall suggest that the client and the legally responsible person, if applicable, discuss the matter with a person of his own choosing such as a relative, friend, or internal client advocate.

- (2) If a voluntary client or his legally responsible person still refuses the intervention after the process in Paragraph (1) of this Rule has been followed and if the use of the intervention is still determined to be essential to the treatment or habilitation of the voluntary client by the treatment/habilitation team and no alternative procedures are appropriate, the treatment/habilitation team shall make a determination as to whether the client meets the requirements for involuntary commitment.
 - (a) If the client meets the requirements for involuntary commitment, as specified in G.S. Chapter 122C, Article 5, the treatment/habilitation team may make a written recommendation to the State Facility Director requesting the initiation of commitment proceedings.
 - (b) If the client does not meet the requirements for involuntary commitment, as specified in G.S. Chapter 122C, Article 5, the treatment/habilitation team may make a written recommendation to the State Facility Director requesting the discharge of the client.
 - (c) The State Facility Director may designate a group to investigate the circumstances and to recommend appropriate action. Such a group shall include, but not be limited to, representatives from the Human Rights Committee, client advocates, and qualified professionals in supervisory positions.
- (3) Interventions as specified in Rules .0203 through .0206 of this Subchapter shall not be administered to a voluntary client in a non-emergency situation if the client or his legally responsible person refuses the intervention.
- (4) If an involuntary client or his legally responsible person, if applicable, refuses treatment or habilitation utilizing interventions specified in Rules .0203 through .0206 of this Subchapter in a non-emergency situation, after the process in Paragraph (1) of this Rule has been followed and if the use of the intervention is still determined to be essential to the treatment or habilitation of the involuntary client by the treatment/habilitation team and no alternative approaches are appropriate, the treatment/habilitation team shall meet to review the involuntary client's or his legally responsible person's response and assess the need for the intervention as follows:
 - (a) If the client or legally responsible person is present, the treatment/habilitation team shall attempt to formulate a treatment or habilitation plan that is acceptable to both the client or legally responsible person and the treatment/habilitation team. The client or legally responsible person may agree to participate in the treatment or habilitation program unconditionally or under certain conditions that are acceptable to the treatment/habilitation team.
 - (b) If the client or legally responsible person is not present, the treatment/habilitation team shall review its previous recommendations and the client's response and shall document their decision in the client record.
- (5) If, after reassessing the need for the interventions, the treatment/habilitation team still believes that the interventions are a necessary part of the involuntary client's treatment or habilitation plan and the client or his legally responsible person, if applicable, still refuses, the client's treating physician and another physician, who may be the Clinical Director or his designee, shall interview the client and review the record. If both physicians determine that the intervention is essential, in accordance with G.S. 122C-57(e), the intervention may be administered as part of the client's documented individualized treatment or habilitation plan.
- (6) The treating physician shall document the decision relative to the utilization of the intervention in the client record. Such documentation shall also include consideration of negative effects related to the specific treatment/habilitation measure.

History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. April 1, 1990; July 1, 1989.

SECTION .0400 - REFUSAL OF PSYCHOTROPIC MEDICATION

10A NCAC 28D .0401 ADMINISTRATION OF MEDICATIONS IN AN EMERGENCY

(a) For the purposes of the rules in this Section, "emergency" means a situation in which a client is in imminent danger of causing physical harm to self or other persons unless there is rapid intervention by the state facility employee in the form of the administration of psychotropic medication.

(b) When a client in a state facility refuses psychotropic medication in a situation that constitutes an emergency, the Director of Clinical Services may authorize administration of the psychotropic medication upon written certification that psychotropic medication is essential in order to prevent the client from causing imminent physical harm to self or other persons.

(c) If it is impossible to comply with the procedure in Paragraph (b) of this Rule without jeopardizing the life of the client or other persons, the medication may be administered upon a physician's written or verbal order.

(d) In any situation falling within Paragraph (b) or (c) of this Rule, the physician authorizing the psychotropic medication shall immediately document the authorization with such documentation including a statement describing the circumstances making the medication necessary and setting forth the reasons why lesser intrusive alternative measures would not have been adequate.

(e) Within 24 hours, or when imminent danger has passed or upon expiration of the physician's order, whichever comes first, the use of psychotropic medication shall be re-evaluated by the physician. Continuation of the administration of psychotropic medication in an emergency after the re-evaluation by the physician shall be permitted for up to 48 hours after written approval by the Clinical Director. If the emergency no longer exists then the procedures specified in Rules .0403 and .0404 of this Section shall apply.

(f) The occurrence of three emergency episodes within a 30-day period where psychotropic medications are administered shall constitute the need for the treatment team to review the treatment/habilitation plan. The treatment team shall develop a plan to respond to future crisis situations.

History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. July 1, 1989.

10A NCAC 28D .0402 BEST INTEREST TEST

(a) The responsible professional shall document in the client record that the administration of psychotropic medication against the client's will is in the best interest of the client. "Psychotropic medication administration is in the best interest of the client" means that:

- (1) the client presents an imminent physical threat to himself, other clients, or state facility employee (Behavior constituting such threat shall be explicitly documented in the client record);
- (2) the client is incapable without medication of participating in any treatment or habilitation plan available at the state facility that will give him a realistic opportunity of improving his condition; or
- (3) although it is possible to devise a treatment or habilitation plan without psychotropic medication which will give the client a realistic opportunity of improving his condition, there is a significant possibility that the client will harm himself or others before improvement of his condition is realized if medication is not administered.

(b) In addition, the following factors shall be considered when determining if psychotropic medication administration is in the best interest of the client, and the responsible professional shall document such considerations in the client record:

- (1) the client's reason for refusing medication;
- (2) the existence of any less intrusive treatments; and
- (3) the risks involved and severity of side effects associated with administration of the proposed medication.

History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.

10A NCAC 28D .0403 REFUSAL IN STATE FACILITIES OTHER THAN MR CENTERS

(a) This Rule applies to all state facilities with the exception of mental retardation centers. Mental retardation centers shall comply with Rule .0404 of this Section.

(b) In the case of an emergency, procedures specified in Rule .0401 of this Section shall apply.

(c) In the case of a client's refusal of psychotropic medication in a non-emergency, the best interest test as specified in Rule .0402 of this Section shall apply. A court order issued regarding the administration of medication for forensic patients would take precedence over this Rule.

(d) Administration to Involuntary Clients.

(1) When an involuntary client or his legally responsible person refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:

(A) The attending physician shall speak to the client or legally responsible person, if applicable, and attempt to explain his assessment of the client's condition, the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action. If the client or his legally responsible person still refuses and the physician still believes that psychotropic medication administration is in the best interest of the client as specified in Rule .0402 of this Section:

- (i) the physician shall tell the client and the legally responsible person, if applicable, that the matter will be discussed at a meeting of the client's treatment team;
- (ii) if the client's clinical condition permits, the physician shall invite the client and the legally responsible person, if applicable, to attend the meeting of the treatment team; and
- (iii) the physician shall suggest that the client and the legally responsible person, if applicable, discuss the matter with a person of his own choosing, such as a relative, friend, guardian or client advocate.

(B) The treatment team shall meet to review the client's or legally responsible person's response and assess the need for psychotropic medication.

- (i) If the client or legally responsible person is present, the treatment team shall attempt to formulate a treatment or habilitation plan that is acceptable to both the client or legally responsible person and the treatment team. The client or legally responsible person may agree to take medication unconditionally or under certain conditions that are acceptable to the treatment team.
- (ii) If the client or legally responsible person is not present, the treatment team shall review its previous recommendations and the client's response and shall document their decision in the client record.

(C) If, after assessing the need, the treatment team still believes that psychotropic medication administration is in the best interest of the client as specified in Rule .0402 of this Section and the client or legally responsible person still refuses administration of the prescribed medication, the Director of Clinical Services or his physician designee, who is not a member of the client's treatment team, shall interview the client and review the record, and may approve the administration of the medication over the objection of the client and legally responsible person.

(2) Such refusal shall be documented in the client record.

(e) Administration to Voluntary Clients.

(1) When a voluntary client in a state facility refuses psychotropic medication in a non-emergency situation, the medication shall not be administered to:

- (A) a competent adult client without the client's consent;
- (B) an incompetent adult client without consent of the legally responsible person; or
- (C) a minor client without the consent of the legally responsible person.

(2) Such refusal shall be documented in the client record.

(f) Independent Psychiatric Evaluation.

(1) Whenever the Director of Clinical Services is asked to review a psychotropic medication decision, the Director of Clinical Services may retain an independent psychiatric consultant to evaluate the client's need for psychotropic medication. The use of a psychiatric consultant may be particularly indicated in cases where there is a disagreement between the prescribing physician and other members of the treatment team.

(2) If the client is evaluated by an independent psychiatric consultant, the Director of Clinical Services shall file a report in the client record indicating:

- (A) the recommendation of the consultant; and

- (B) why the Director of Clinical Services made a decision to follow, or not to follow, the consultant's recommendation.
- (g) Case Review by the Director of Clinical Services.
 - (1) The Director of Clinical Services or his physician designee shall review each week the treatment or habilitation program of each client who is refusing to accept psychotropic medication administration voluntarily to determine:
 - (A) whether the client is still receiving the prescribed medication;
 - (B) whether psychotropic medication is still in the best interest of the client as specified in Rule .0402 of this Section; and
 - (C) whether the other components of the client's treatment or habilitation plan are being implemented.
 - (2) The Director of Clinical Services (not his designee) shall review quarterly the treatment or habilitation program of each client who is refusing to accept psychotropic medication administration voluntarily to determine:
 - (A) whether the client is still receiving the prescribed medication;
 - (B) whether psychotropic medication is still in the best interest of the client as defined in Rule .0402 of this Section; and
 - (C) whether the other components of the client's treatment or habilitation plan are being implemented.
- (h) Documentation.
 - (1) Each step of the procedures outlined in Paragraphs (d) through (g) of this Rule shall be documented in the client record.
 - (2) Whenever the client or his legally responsible person has refused the administration of psychotropic medication and later agrees to such administration, the documentation of consent, either verbal or written, shall be included in the client record.
- (i) A client's willingness to accept medications administered by mouth in lieu of accepting medications administered by an intramuscular route does not necessarily constitute consent. The responsible professional shall ensure that the client is indeed willing to accept the medication and is not responding to coercion.
- (j) Statistical Record. The State Facility Director shall maintain a statistical record of the use of psychotropic medication against the client's will which shall include, but not be limited to, the number of administrations by client, unit of like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the Division Director and Human Rights Committee on a monthly basis.

*History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;
 Eff. October 1, 1984;
 Amended Eff. April 1, 1990; July 1, 1989.*

10A NCAC 28D .0404 REFUSAL IN REGIONAL MENTAL RETARDATION CENTERS

- (a) This Rule applies to mental retardation centers. All other state facilities shall comply with Rule .0403 of this Section.
- (b) In the case of an emergency, procedures specified in Rule .0401 of this Section shall apply.
- (c) In the case of a client's refusal of psychotropic medication in a non-emergency, the best interest test as specified in Rule .0402 of this Section shall apply.
- (d) Medication Refusal Incident Defined.
 - (1) A medication refusal incident is defined as any behavior on the part of the client, be it verbal or non-verbal, or legally responsible person, which is judged to be an attempt to communicate an unwillingness to have psychotropic medication administered to the client.
 - (2) Given the characteristics of the mentally retarded population, some very commonplace acts that may not necessarily constitute refusal should be considered. These may include:
 - (A) passivity or the lack of active participation in various activities which may require physical prompting such as hand over hand manipulation in order to learn a particular skill or complete a particular task;
 - (B) spitting out medication because of objectionable texture or taste (Therefore, disguising the texture or taste of psychotropic medication with a pleasant tasting vehicle such as applesauce or pudding may not necessarily be considered administration against the client's will.); or
 - (C) tantrums, self-injurious behavior, aggressive acts, etc. which would not automatically be judged to represent a client's attempt to refuse medication. However, it is recognized these behaviors in

some cases may indeed be the only form of communication a client may have with which to express his or her refusal.

(e) Administration of Medication in Non-Emergency Situations. When a minor or adult client or his legally responsible person refuses psychotropic medication in a situation that is not an emergency, the following procedures are required:

- (1) If a state facility employee suspects that a client may be attempting to refuse psychotropic medication, the state facility employee shall notify the client's qualified mental retardation professional (QMRP) and the client's internal advocate.
- (2) If the QMRP agrees that the client may be attempting to refuse psychotropic medication, the QMRP shall notify the client's internal advocate and shall assemble the client's treatment team, including the treating physician, to assess the refusal incident.
 - (A) In the case of a client who is suspected of refusing, the team shall make a decision as to whether the client's behaviors, be they verbal or non-verbal, are true indications of refusal. In those instances where behavior is determined not to be refusal, authorization for the continued administration of the psychotropic medication may be given.
 - (B) In those cases where behaviors are judged to be refusal or when refusal originates with the competent adult client or with the client's legally responsible person, the client when possible or appropriate and the legally responsible person shall be invited to meet with the team to resolve the issue.
 - (C) The physician shall explain the reasons for prescribing the medication, the benefits and risks of taking the medication and the advantages and disadvantages of alternate courses of action. The team shall make every effort to develop a habilitation plan or specific form of treatment that would be agreeable to the client or his legally responsible person and still be consistent with the treatment needs of the client.
- (3) In those cases where an agreement cannot be reached between the treatment team, including the physician, and the legally responsible person, and the team, including the physician, still feels that psychotropic medication administration is in the best interest of the client, the issue shall be referred to the State Facility Review Committee appointed by the State Facility Director.
 - (A) The composition of this committee should include a complement of professionals, including the Medical Director (or his designated physician) and Human Rights Committee representatives. The internal client advocate shall be invited to represent the client's interest but not be considered a member of the State Facility Review Committee. The Committee should not include state facility employees providing direct services to the client refusing the psychotropic medication. In any event, the confidentiality regulations as codified in 10A NCAC 26B shall be followed.
 - (B) As with the treatment team, the State Facility Review Committee shall involve the client and the legally responsible person where appropriate in an attempt to arrive at a mutually acceptable solution.
 - (C) If agreement is reached between the legally responsible person and the State Facility Review Committee, no further proceedings are necessary. If agreement cannot be reached the State Facility Review Committee shall forward its recommendations concerning any changes in treatment or support of existing treatment methods to the Center Director.
- (4) If the State Facility Director receives recommendations concerning any changes in treatment or support of existing treatment methods regarding a specific client who has refused psychotropic medications and this recommendation is still unacceptable to the legally responsible person, the Center Director shall have, as the last alternative, the authority to discharge the client under G.S. 122C-57(d). In those cases where the Center Director makes the decision to discharge the client, information shall be provided to the legally responsible person regarding the grievance procedures as specified in 10A NCAC 26B .0203, .0204, and .0205.

(f) Documentation. Each step of the procedure outlined in Paragraphs (d) through (e) of this Rule shall be documented in the client record.

(g) Statistical Record. The State Facility Director shall maintain a statistical record of the use of psychotropic medication against the client's will which shall include, but not be limited to, the number of administrations by client, unit of like grouping, responsible physician, and client characteristics. The statistical record shall be made available to the Division Director and Human Rights Committee on a monthly basis.

*History Note: Authority G.S. 122C-51; 122C-57; 122C-242; 143B-147;
Eff. October 1, 1984;
Amended Eff. April 1, 1990; July 1, 1989.*